Public Utilities

FORTNIGHTLY

October 17, 1929

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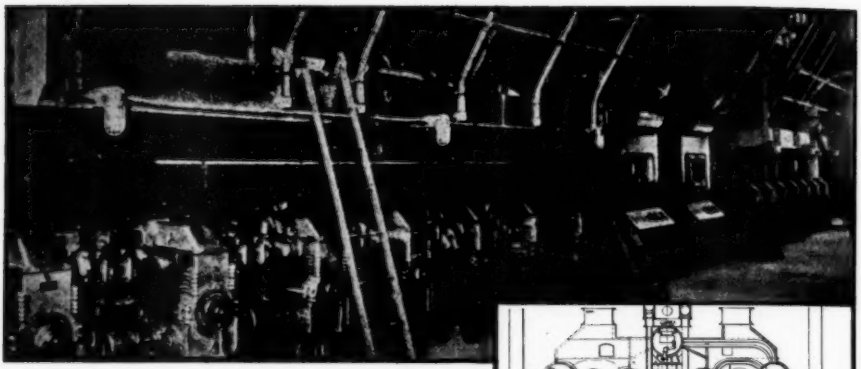

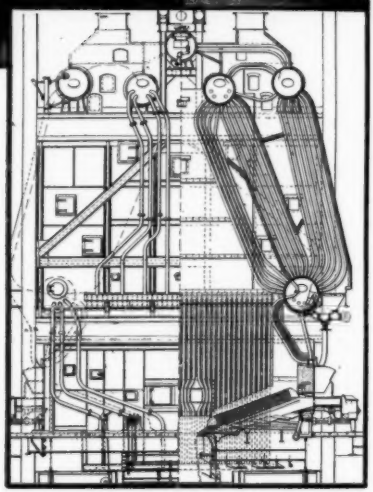

DISTINCTIVE INSTALLATIONS of C-E Equipment

The Twelfth Street Station of the Allegheny County Steam Heating Company, Pittsburgh, Pa., is indicative of the present day trend toward high steam generating capacities. • The stokers, among the world's largest multiple retort stokers, the boilers and the furnace walls, are all co-ordinated into one unified design to supply 300,000 lb. of steam continuously, with peaks up to 400,000 lb. while burning Pittsburgh District Bituminous Coal. This equipment was designed, fabricated and installed by Combustion Engineering Corporation. • The Twelfth Street Station is representative of the distinctive installations made by this organization in co-operation with consulting and company engineers.

Cross section through boiler unit at Twelfth Street Station showing C-E Multiple Retort Stoker, C-E Boiler (Ladd Type), and C-E Fin Furnaces. This unit is designed to deliver 300,000 lb. of steam continuously with peaks up to 400,000 lb.

Two of the four C-E Multiple Retort Stokers installed in the Twelfth Street Station of the Allegheny County Steam Heating Company, Pittsburgh. These stokers are installed under 3,670 h. p. C-E Boilers (Ladd Type). Designed and constructed by the Byllesby Engineering & Management Corporation.

COMBUSTION ENGINEERING CORPORATION

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A SUBSIDIARY OF INTERNATIONAL COMBUSTION ENGINEERING CORPORATION

HENRY C. SPURR, *Editor*
KENDALL BANNING, *Editorial Director*
ELLSWORTH NICHOLS, *Associate Editor*
FRANCIS X. WELCH, *Contributing Editor*
M. M. STOUT, *Assistant Editor*

Public Utilities Fortnightly

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PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Pages with the Editors

DURING the past few weeks PUBLIC UTILITIES FORTNIGHTLY has been extensively quoted and commented upon editorially in the daily press and in the technical and trade journals throughout the country.

* *

AMONG the articles which have aroused particular interest has been SENATOR HUGO L. BLACK'S contribution in which he expressed his views about denying the use of radio stations to public utility companies, and COL. HENRY A. BELLOWS' article in which he expressed views in direct disagreement.

* *

COMMISSIONER WORTH ALLEN'S recent article, in which he put forth the relative merits of the elective *versus* the appointive method of creating State Commissioners, and MR. RALPH L. DEWEY'S observations on the present railroad consolidation *impasse,* have both inspired wide editorial comment.

* *

ARTICLES that have treated of the question as to whether electric and gas utilities should be permitted to merchandise equipment, in competition with merchandising concerns, have not only focussed attention upon this live problem, but have led to considerable correspondence with the editors.

* *

SENATOR JAMES COUZENS' views, as expressed in this magazine, on the proposed creation of a "Communications Commission" for regulating telegraph, telephone and radio utilities; PROF. HERBERT B. DORAU'S discussion of the reasons why municipal plants are being sold to private corporations, as quoted in this magazine, are among the contributions which editors have considered of such live interest as to justify quotation and comment.

* *

THERE is one outstanding feature of all of these contributions that arouse public interest and excite editorial comment:

* *

Every contribution in PUBLIC UTILITIES FORTNIGHTLY *that has been quoted or commented upon editorially deals with a controversial subject.*

* *

ROY L. GARIS (whose article "The Perils of Paternalism" appears on pages 471-480 of this issue), is Associate Professor of Economics at Vanderbilt University. He received his A.B. and A.M. degrees at the University of Virginia and his Ph.D. degree at Columbia University.

FOR the past eight years he has been a member of the faculty at Vanderbilt; during that period he has taught at the summer schools at the Universities of Richmond, Virginia, Clark and Alabama. He has been a frequent contributor to the magazines and two years ago his book "Immigration Restriction" was published by the Macmillan Company.

* *

DR. GARIS' article raises some pertinent questions. Particularly at this time when American homes are being invaded by prohibition officers and American business offices are being investigated and their records and files are being pried into by government agents.

* *

UNDER what circumstances are such activities permissible? Where can the line be drawn between what some folks regard as an unwarranted invasion of our personal rights and what others look upon as a proper governmental effort to guard the public from illegal and improper practices?

* *

JUST how far can government agents seize, inspect and subpoena the books of account, correspondence files and other papers of public utility and other corporations?

* *

IN view of the investigations that are being conducted by the Federal Trade Commission, these questions assume more than a mere academic interest.

* *

MANY American business men are wondering what their rights to privacy really are, and how the annoyance and expense of placing data at the disposal of regulatory commissions may be restricted to those organizations which may be properly suspected of illegal practices.

* *

ABOUT ten years before the American patriots signed the Declaration of Independence, Lord Chatham, in the British Parliament, declaimed:

* *

"EVERY man's home is called his castle. Why? Because it is surrounded by a moat, or defended by a wall? No. The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may

(Continued on page VIII)

DR. ROY L. GARIS

blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dare not cross the threshold of the ruined tenement."

* *

THAT statement expresses the attitude of Englishmen and Americans towards their governments, and the legislators and courts have upheld the principle to a large extent.

* *

REVOLT against governmental intrusion into a man's home and possessions, except for cause, found its fruition in the Fourth Amendment of the Federal Constitution, which declares that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

* *

SIMILAR clauses are found in the constitutions or statutes of the states.

* *

THE meaning of this prohibition and its proper application has been the subject of many judicial decisions; the rights of citizens in criminal cases have been defined; the prohibition has been explained in its relation to searches and seizures of vehicles carrying prohibited intoxicating liquors; it has been invoked to protect owners against seizures of private papers and records.

So important is this subject at this time that the staff of PUBLIC UTILITIES FORTNIGHTLY has been engaged for several months on a study of its legal aspects; the results of this study have been incorporated in a comprehensive article that will appear in the coming issue of this magazine—the issue dated October 31st.

* *

HENRY C. SPURR and ELLSWORTH NICHOLS, whose articles "Public Utility Mergers and the Law" and "The Progress of Regulation of Gas Utilities" will be found in this number, are both of the editorial staff of PUBLIC UTILITIES FORTNIGHTLY.

* *

THE situation in Massachusetts, so far as the regulation of public utilities is concerned, has been characterized by some unusual features.

* *

AMONG the close observers of the developments in Massachusetts is DR. IRSTON R. BARNES, of the Department of Economics, Sociology and Government, of Yale University.

* *

DR. BARNES has just completed a careful study of the subject—a study that embraces Massachusetts' practice in regard to security issues and prudent investment, and the state's attitude on the fair value rule.

* *

IN the coming issue of PUBLIC UTILITIES FORTNIGHTLY will appear the first of a series of two articles on this topic, contributed by DR. BARNES.

* *

AMONG the important commission and court rulings noted in the Public Utility Reports section of this number (See page 511), are the following:

* *

WHEN it comes to rendering service it seems that too great a capacity is preferable to too small a capacity. This was the ruling of the Maryland Commission in valuing the property of a gas company. (See page 4.)

* *

THE cost of financing has again been excluded as an item in a valuation proceeding. The Maryland Commission points out that financing costs are considered in determining the rate of return to be allowed.

* *

THE Boston Consolidated Gas Company Case, which has stirred up much feeling in Massachusetts in regard to the service charge, appears in this issue. (See page 9.) The Commission is now hearing arguments for a revision of the rate schedules.

* *

THE next number will appear October 31st.

—THE EDITORS.

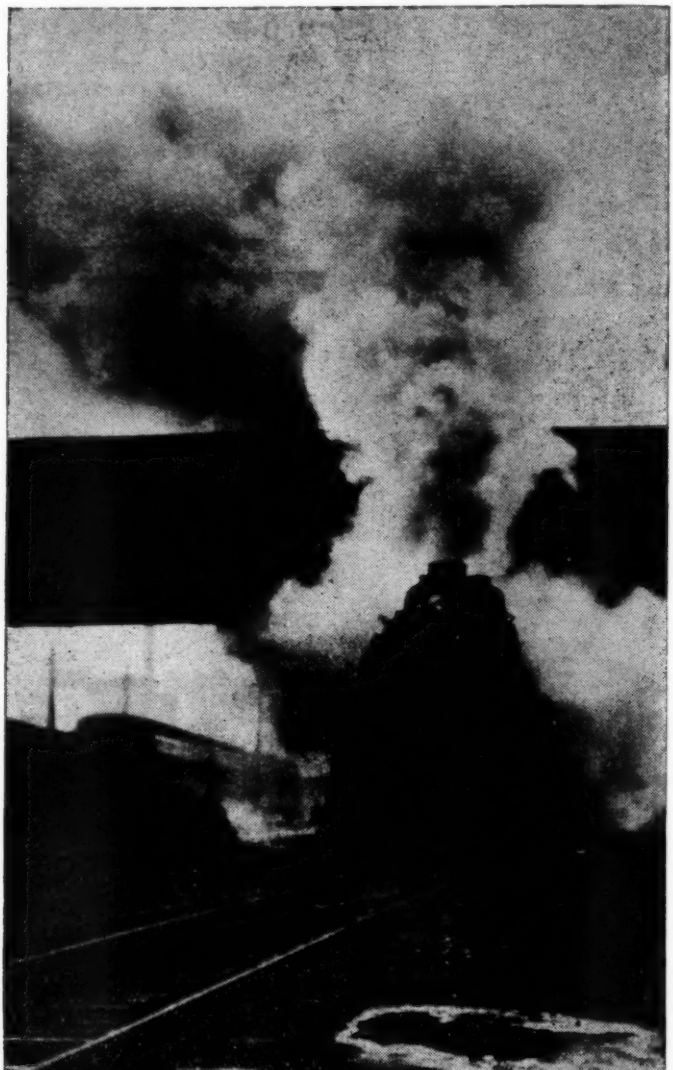
OCTOBER

Reminders of Coming Events — **Utilities Almanac** — *Notable Events and Anniversaries*

17	T*h*	The New York, New Haven & Hartford Railroad System was dissolved by court decree and control given up of the Boston & Albany and Boston & Maine roads; 1914.
18	F	Traffic between Rome and Copua, the famous trade center was vastly stimulated by the opening of the Appian Way by APPIUS CLAUDIUS CAECUS, 312 B. C. 
19	S*a*	Possibilities of air transport were demonstrated by SANTOS-DUMONT, who won a prize of 100,000 francs by flying a dirigible 10 miles in 30 minutes, 1901.
20	S	The first electrically-driven car was tried out on the railroad tracks of the Baltimore & Ohio Railroad by its inventor, DR. PAIGE, 1850.
21	M	THOMAS A. EDISON, after weeks of relentless experimenting, produced the first incandescent lamp, which "glowed triumphantly for forty hours," 1879.
22	T*u*	¶*A convention of the United States Independent Telephone Association will open today in Chicago for a 4-day session.*
23	W	Natural gas was first put to practical use by the Chinese, who piped it through bamboo tubes and used it for boiling brine; 14th Century.
24	T*h*	The 100-ton paddle-wheel steamboat *New Orleans* filled with awe thousands of spectators of its maiden voyage to New Orleans, 1811.
25	F	Passengers on the first Union Pacific excursion train witnessed the laying of 800 feet of track in Nebraska and then returned to camp, 1866. 
26	S*a*	The Erie Canal was officially opened when a canal boat bearing GOV. DEWITT CLINTON and two casks of Lake Erie water left Buffalo for New York City, 1825.
27	S	Free navigation rights on the Mississippi were secured by treaty from Spain, 1795. OWEN YOUNG celebrated his first birthday, 1874.
28	M	The Mount Clare passenger and freight station of the B. & O. Railroad was completed in Baltimore; it is still in use, the oldest station in the country; 1830.
29	T*u*	The Vienna fire department first installed radio receivers on its apparatus to keep its forces in constant touch with headquarters, 1923.
30	W	The first commercial telegraph message was sent by DR. E. K. KANE from Atlanta to his father in Philadelphia, requesting supplies for a trip to the North Pole, 1849.

"Would that everyone would realize that public utilities are run by human beings just like themselves, and not by some monster hidden away in a back office!"

—PRESTON S. ARKWRIGHT



From a photograph by G. H. Coster

"A Pillar of Smoke by Day,
A Pillar of Fire by Night"

Public Utilities
FORTNIGHTLY

VOL. IV; No. 8 OCTOBER 17, 1929

The PUBLIC UTILITIES AND THE PUBLIC

ONE of the characteristics of the machine age, according to a recent and well known writer on the subject, has been the increasing emphasis placed by modern society on the community. Anthropologists tell us how our ancestors emerged from caves to form clans which in time developed into tribes. From history we learn that the tribe was the basis of the state or sovereign consciousness that predominated civilized society until the present day.

Now it appears that we are growing communistic—not necessarily in the political sense of that term, but in the sense that the modern community is the center about which the economic, social, and industrial life of all of its inhabitants revolves. The Chamber of Commerce and Rotary movements are pointed out as symptoms of this communal tendency. The state no longer directly cares for the safety, health, and morals of its citizens. These powers have been delegated to the communities. Municipal courts are taking over an increasing part of the work of the old district and county courts. City policemen do a greater volume of actual policing than state troopers. The Community Chest is becoming a popular institution as the official distributor of funds to the needy. In short, the average citizen's contact with the state is chiefly through the medium of the departments of his community. Only out in the agricultural sections does the state still exercise immediate control.

This increasing importance of the community as the center for the distribution of government is unquestionably the result of what sociologists call the "urbanization" of civilization. It is the result of the wholesale exodus of rural citizens to city districts which has taken place within the last few years. It is the

inevitable answer to the well known query "how are we gonna keep 'em down on the farm?"

It follows from this close economic relation of communal interests that most communities are trying to attract new industry, knowing well that it will not only increase local prestige and tax assessments but also bring within their borders new groups of desirable citizens who will spend their wages there.

Utilities also are very much interested in attracting new industry and have sometimes tried to do it with specially reduced rates for service. More recently State Commissions have been permitting privately owned public utilities to make specially attractive rates to manufacturers using large quantities of service in an effort to bring these concerns to locate within their territory. This more liberal policy has never been extended to the point of holding that such a rate could ever be less than cost, but rates not high enough to yield a return rendered by other classes of rates have been permitted to industries on this theory.

But it remained for the Louisiana Commission to go the whole limit in permitting a gas company to put into effect the most advanced Rotarian policies for the benefit of the city of Shreveport. Not only did the Commission fail to set any limit beyond which the utility might not reduce its rates for the purpose of stimulating communal commerce, but the utility was also enjoined from extending these rates to any new industry which, if located in Shreveport, *would compete with industries already there.* Speaking for the Commission, Commissioner Fields says:

> "Realizing that the legality of such an order is based largely upon the acquiescence therein by the utility, authority will be granted the distributing company, for a period of one year after the date of this order, with the approval of the Commission, to sell gas to any such new industries which may locate within the city of Shreveport and the town of Bossier City and/or their environs, at rates below those provided in the above schedule, applicable only to manufacturing and industrial consumers, provided, however, that no such rate shall be granted to any new industry which may engage in a business competitive with any industry at that time, or then operating within the city of Shreveport and/or the town of Bossier City and/or their environs and being at that time served by the utility. The authority to determine whether such prospective consumer is a competitor of any such existing industry is to be under the jurisdiction of the Louisiana Public Service Commission."

As we view the authorities, there seems to be some doubt as to the power of a State Commission to be so solicitous for the welfare of a particular community as to restrict the extension of special rates by a utility, however willing, only to industries not competing with concerns already located there. There have also been decisions in other states to the effect that a special rate to attract industry which is less than the cost of the service is discriminatory as against the other consumers.

Shreveport *v.* Southwestern Gas & Electric Co. Case No. 789, Order No. 647.

The Radio Threatens to Use the Telephone

THE growing use of the radio has resulted in a very novel situation in Minnesota. It appears that some enterprising individuals in that state have thought up a brand new service. It is neither telephone nor radio but, as far as we can learn from the meager court reports, it is a combination of both.

These individuals formed the WiRaDio Service Company for the alleged purpose of supplying "programs of entertainment and education over and upon wires to speakers installed in the homes or places of business of subscribers, from a central station or studio."

We assume from the context of this report that the word "wires" means "telephone wires" and the word "speakers" means "loud speakers." The Tri-State Telephone & Telegraph Company which furnished telephone service in the neighborhood refused to furnish spare circuit facilities for its use in supplying these "programs of entertainment and education," and the new company sought a writ of mandamus to compel the utility to co-operate.

The district court for the third judicial district of Minnesota, in refusing to issue a writ of mandamus sought by the WiRaDio Company, said in part:

> "Respondent's counsel has argued with great ability the contention that the service demanded by the petitioner is not telephone service, and moreover is not any sort of service which respondent is obliged to furnish in its capacity of a public service corporation; it may, if it desires, furnish it in its private proprietary capacity, but it is not a public utility. This argument goes to the ultimate merits of the case; but the issue involved has not been presented to this court either by demurrer or motion, and I do not feel at liberty to pass upon it."

This action of the court does not, of course, decide the question of whether or not a telephone company could be compelled to furnish this service. It simply holds that the entertainment company was in the wrong forum and should have applied to the Railroad and Warehouse Commission for relief.

We do not know whether the company will go before the Commission or not but the point raised is certainly an interesting one. Is the transmission of entertainment or music a public service? Is a company engaged in such service a public utility? Without any better authority than our own opinion, we would be inclined to say "No" to both of these queries. Assuming that we were right, could such a company compel a telephone utility to render its regular utility service as part of this private business of entertaining and educating the citizens?

The duty of a telephone company to furnish service for resale by a company not classed as a public utility has received judicial attention. It has been held in Pennsylvania that a telephone company should not be required to install its telephones and associated apparatus in boxes or booths owned by a highway emergency company and attached to posts adjacent to a public highway in order to enable the emergency company to resell telephone service to its custom-

ers. Likewise, the Oregon Commission has ruled that a telephone company is under no obligation to connect its lines with an interurban community system owned and maintained by a bank, since the latter system does not constitute a public utility.

But it is clear that these two cases are not entirely analogous. The present trend of the radio market, where such excellent receiving sets may be purchased so reasonably, would seem to indicate that the public for the most part would rather twist its own dial and do its own receiving than have it relayed over a telephone from a central receiving set. It is true, certain hotels and apartments are making quite a feature of the central radio receiving set. But it is very doubtful whether there is or ever will be sufficient demand for a *community* radio receiving service as to create a profitable business.

Nevertheless, if this telephonic radio experiment should become a profitable business, there is no reason why the telephone companies themselves should not be permitted to render the service as a private enterprise, just as gas and electric companies are permitted to sell merchandise independently of their utility obligations. Public education and entertainment are very commendable enterprises, but such enterprises are not, therefore, public utilities—otherwise the Commission would be regulating the service of newspapers, and the price of orchestra seats.

Minnesota ex rel. WiRaDio Service Co. *v.* Tri-State Teleph. & Teleg. Co. Sept. 6, 1929

The Transit Commission Rebuffs a New Move for a 7-Cent Fare in New York City

THERE is a quaint old English case that is usually explained to law students during their course in "Pleading," to emphasize the fact that plural defenses are not bad for repugnancy. The classical proceeding was called the "Case of the Pot." Here were the facts.

A certain farmer was suing another because, as he claimed, the latter had borrowed from him an iron pot and returned it with a big crack in it. The defendant put in three separate defenses:

1. He had never borrowed the pot.
2. He had returned it in good condition.
3. The pot was cracked when he borrowed it.

Absurd as these inconsistent defenses seem when considered collectively, our law, nevertheless, would permit a defendant to interpose each as a separate defense without regard to the others. True, the effect on the average jury would not be very convincing, yet, theoretically, inconsistent defenses are permissible.

But while this may be true as regards defendants, the law is quite different respecting plaintiffs. A plaintiff may assert his grievance on only one theory. He may have two or more "causes of action" but if the facts are so doubtful as to give rise to two inconsistent theories, he must make what the lawyers call an "election of remedies." For example, a

widow may be left $10,000 under her spouse's will in "lieu of dower." Now the law gives her the right to claim dower independently of any will. Therefore, she must elect as to whether she wants to take *under* the will or *against* it.

The Interborough Transit Company has recently learned that the doctrine of election of remedies may apply even to Commission regulation of utilities. Early last year the transit company filed tariffs with the Transit Commission for a 7-cent fare on subway and elevated lines. By § 29 of the Public Service Commission Law, such tariffs would ordinarily become effective after thirty days unless suspended by the Commission. The Commission refused to entertain the application, however, claiming that § 29 did not apply to rates fixed by contract. Whereupon the company commenced the Federal suits which culminated in the well known recent decision of the United States Supreme Court. These suits were based on the theory that the 7-cent fare *is now the lawful fare in New York city* by virtue of the operation of § 29. The highest court decided that the point should first be settled in the state courts.

While this litigation under § 29 is still pending before the state courts, the transit company more recently made a new application before the Transit Commission under § 49 of the same statute. This application proceeds on the theory that the 5-cent fare *is now the lawful existing rate* but asks the Commission to make an inquiry into the situation for the purpose of exercising its rate-making powers to *increase* the present rate which, the company claims, is inadequate. Under § 29, the company itself attempted to fix the rate. Under § 49, it asked the Commission to do so.

The Transit Commission declined to take jurisdiction of the second application while the litigation of the first proceeding is still pending in view of the inconsistency of the company's position. The Commission also pointed out that the company was under a lawful order of the state courts restraining it from taking any steps to put into effect a higher rate than 5 cents. The Commission was of the opinion that it would itself be in contempt if it aided or abetted the company's move for a higher fare.

The application under § 49 was dismissed without prejudice to the right of the company to renew it. The opinion states:

> "It would seem that the present case involves inconsistent attempts, by following two separate remedies, to establish the same basic rights. . . . It proceeded first under § 29 and filed schedules for the purpose . . . of fixing a permanent 7-cent rate on its Manhattan Division. It now seeks to initiate a rate proceeding under § 49 wholly irrespective of and without prejudice to its rights under the schedules supposedly filed pursuant to § 29. Obviously, the remedy under § 29 was adopted in the present case, not in connection with or supplementary to a rate proceeding under § 49, but entirely irrespective of and inconsistent with such a proceeding."

Re Interborough Rapid Transit Company, Case No. 2973.

Are State-Wide Uniform Telephone Rates Practical?

IN the last issue we discussed in these pages certain symptoms of what might be interpreted as a trend towards state-wide uniform rate making as applied to electric service. Now it appears that telephone rates are being discussed in some quarters as a possible object for the same treatment. Governor Roosevelt said in Syracuse, New York, on August 29th:

> "If you buy a ticket on a railroad in this state it makes no difference whether you are traveling on the main line of the New York Central, where the traffic is heavy, or on a small, single-track road in a sparsely settled section of the state. Your railroad ticket costs the same per mile in both cases.
>
> "This is on the theory that, even though there may be little or no profit to the railroad in running passenger trains on a branch line, it should be made up for by the profit of the heavily traveled section of the road, and that a citizen should not be discriminated against just because he happens to live on a branch line instead of a main line."

The Governor then complains because the original telephone companies were allowed to charge different kinds of rates, and now, when practically all telephones are controlled by a single merger, we do not insist on either uniform service or uniform rates.

The Governor pointed out that the cost of the telephone to the farmer depends on where he happens to live and that if he happens to be born on an isolated farm, he has to shoulder practically the entire original cost and upkeep of his telephone line; whereas subscribers in more populated districts obtain service at greatly reduced cost.

"In other words," says the Governor, "the practical use of the great utility known as the telephone is dependent in cost and usefulness in too many cases on the place where a man's house happens to be located."

The Governor's analysis of the theory of railroad rate making seems to be in accord with the best authorities. It is just as much advantage for the man in the Grand Central station in New York to be able to look over a map of the Empire State and take his pick of traveling to any point from the city of Buffalo to an isolated spot in the Adirondacks at the same rate per mile, as it is for the Adirondack inhabitant to ride into New York at the same rate per mile as his brother from Buffalo.

Of course, the more obvious defect in the Governor's analogy between telephone and railroad rates is the fact that it is impossible to measure the cost of the former with as accurate a yard stick as that applicable to the latter. There is a definite unit of cost for both electric and railroad rates—the per kilowatt hour and the mileage rate respectively; but any attempt to measure telephone service along the lines of either consumption or distance would be highly impractical. The only logical rate measure for local telephone service is the cost with due regard for the value of it.

This brings to mind another defect in the parallel between railroad and telephone rates which the Governor seems to have overlooked. There are two types of communication just as

there are two types of transportation —local and long distance. The telephone is at once the dual medium of communication. It handles not only the local but also the long distance business. On the other hand, the railroad handles only the interurban or long distance transportation business. Local transportation is carried on by street railways and busses. If the Governor, therefore, wants to make his parallel between communication and transportation strict and true, he would, in all fairness, have to consider transportation as a whole.

Now what would the Governor say if some one suggested that all street railways and busses in every large city in New York state should be run the same rate per mile? And *what would Mayor Walker say,* who has fought so bitterly for the right to ride up and down Broadway for a nickel? If it costs 10 cents to ride a street car in Albany and 5 cents to ride in Brooklyn, what possible basis is there for averaging the two charges?

But after all is there any more economic connection between local switching telephone service in New York city and such service in Albion, New York, than there is between street car service in the state capitol and Brooklyn? Even if there were uniform revisions it would burden rather than aid the farmer. Local rural rates would have to go up to meet local city rates and vice versa.

As far as long distance telephone rates are concerned the Governor should not be dissatisfied. They are already fairly uniform. The toll charge for a 100-mile call is about the same whether the point called is north, south, east, or west of the originating station.

Segregated Costs for Telephone Service Is Permissible for Private Exchange Rates Only

SPEAKING of segregated costs of telephone service for rate-making purposes brings up a rather interesting decision of the New Hampshire Commission.

Telephone equipment is so interrelated in its very nature and use that segregation on the basis of costs of operation in the various branches of service is, according to Commissioner Brown, impracticable. Having determined in any given case the question of return as affected by revenue, expenses, and valuation of property, the fairness of rates for individual classes of service must be judged by comparison with rates for other classes of service enumerated in the same rate schedule, and the value of the service to the subscribers, with such regard to costs of rendering such classes of service as is possible.

Probably the rural excess radius service is the clearest example. Opposition was made at the hearing before the New Hampshire Commission with relation to proposed increases in a rural line mileage charge. The Commission felt that while the mileage charges were not applicable within 6 miles from the central office, yet in the case of the extremely long rural lines where the mileage charges were applied, they appeared to be somewhat

high. This cannot be said to be true, of course, upon the basis of cost. From such studies as the Commissioners had made from time to time in the exercise of its regulatory duties over telephone companies, they were satisfied that many of the lines were operated at a loss when such operation was considered by itself and not as part of a system operation.

This appears as a strong reason against the theory of making telephone rates for various classes of service upon the basis of segregated costs of operation. Commissioner Brown stated that if the cost basis should prevail as the sole test, it is not unlikely that some rural sections now served would be without service, and the Commission would be without authority in the premises.

There is one class of service, however, that is susceptible to a fairly accurate segregation on a cost basis and that exception is the private branch exchange or the so-called "switchboard" service. Commissioner Brown, rendering an opinion of the New Hampshire Commission, stated:

> "In case of a central office switchboard, however, it appears not now possible to segregate the costs and revenues for any individual class of service. That is also true of other types of telephone plant. After careful investigation into this question, we are of the opinion that private branch exchange switchboards constitute the only general class of telephone property thus susceptible to segregation on the basis of cost to render service."

Re New England Teleph. & Teleg. Co. D-1208.

Eminent Domain Is Not a Weapon of Warfare Between Competing Utilities

THE old English maxim about a man's home being his castle is subject to a great many legal qualifications. One of them is the principle of eminent domain. By this principle, if any particular piece of property, be it a castle or otherwise, lies in the path of public service, it has to be given up for the good of the community. Public utilities are given the right to select property for condemnation in laying out the routes for their systems because property needed in the development of utility service is certainly to be devoted, as the lawyers say, to a "public use."

But a very important problem in eminent domain proceedings that should be of special concern to utilities is the question of whether property already devoted to public service can be condemned by a utility having need of it for another public service.

Where two kinds of public utility service involved are different in character, the authorities seem to point to the conclusion that the superior public use controls. Thus a railroad condemning land for its right of way can take property already used for transmission lines where the latter can just as conveniently be relocated elsewhere. So, also a municipality can condemn land already in use by a railroad for a new street where, after receiving due compensation, the railroad could just as easily obtain adequate substitute property elsewhere.

But how about a case where one of the utilities is competing with the other and wants to condemn the latter's property? Evidently the law on this point is not well settled. In a certain western city the municipality has gone into the electric business. It has done this in direct competition with an existing private utility. Not long ago the municipal plant found that it needed a certain site for a substation. The site already belonged to the private company and was being used by them. The city brought condemnation proceedings declaring that the property was needed for devotion to a public use. The private company resisted on the ground that it was already devoted to public use. This legal battle is still raging.

A few months ago we reported a situation where a Pennsylvania municipality decided to operate its local electric plant and started out by seeking to condemn the existing private plant. The Pennsylvania courts refused to allow the municipality to do this and said that the right of eminent domain would not be permitted to be used as a weapon between competing utilities.

In order, however, for a utility to invoke this rule laid down by the Pennsylvania supreme court, in resisting eminent domain proceedings brought by a rival utility, it is necessary that the property involved be actually, properly, and lawfully employed in public service. Mere ownership of it by a competitive utility would not be sufficient. Recently an unsuccessful applicant for authority from the Tennessee Commission to develop a certain hydroelectric project objected to awarding the right to a rival applicant on the ground that the successful applicant could not take away by condemnation lands already owned by the unsuccessful applicant which were acquired for the purpose of devoting them to a public use. The Commission said:

> "The answer to this contention is that these lands are held just as any other lands along the river are held by any private individual. They can not be devoted to or impressed with a public use until such time as this Commission has granted a certificate of convenience and necessity and until such time as the Federal Power Commission has granted a permit, followed by a license, authorizing the construction of a hydroelectric development. The present owner acquired these lands charged with knowledge of the fact under the law that such certificate and license would have to be first obtained before these lands could be devoted to a public use."

Re Tennessee Eastern Power Co. Dockets Nos. C-1, D-1.

PERMISSION *to abandon utility service cannot be denied to a dead corporation. This was a ruling recently made by the Montana Commission upon application of the former trustees of a telephone company, whose franchises had expired nearly four years previous, to abandon service which had been carried on without corporate authority by the erstwhile secretary-treasurer of the former utility.*

PUBLIC UTILITY MER-

Do the Anti-Monopoly Utility Corporations Service Commis- Power to Regu- Authorize

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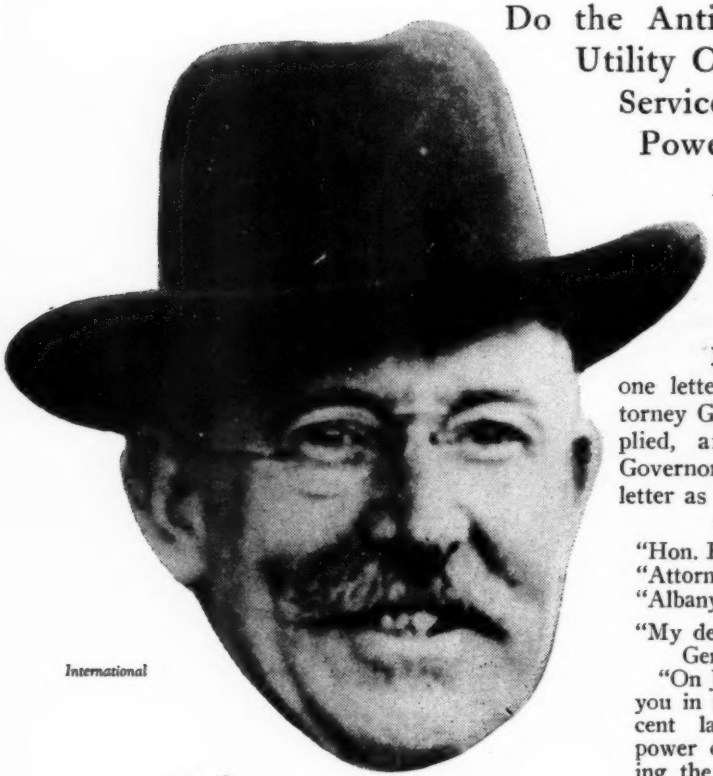

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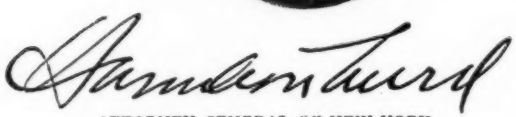

ATTORNEY GENERAL OF NEW YORK

THE question recently raised by Honorable Franklin D. Roosevelt, Governor of New York state, in letters to Honorable Hamilton Ward, Attorney General of that state, as to the legality of a proposed merger or consolidation of holding companies has attracted wide attention.

Governor Roosevelt wrote one letter to which Attorney General Ward replied, after which the Governor wrote another letter as follows:

"July 26, 1929.
"Hon. Hamilton Ward,
"Attorney-General,
"Albany, N. Y.

"My dear Mr. Attorney General:

"On June 29th I wrote you in regard to the recent large merger of power companies covering the greater part of the territory of the state above New York city. The whole gist of my letter was, of course, contained in the following sentence:

"'I would request that you make an investigation of this proposed combination and of the other recently completed combinations, and the terms thereof, in order to determine whether any provisions of law, in letter or in spirit, are being violated thereby.'

"On July 12th I received the copy of your letter to this inquiry. Your reply occupied 23 printed pages,

GERS AND THE LAW

Statutes Apply to When Public sions Have the late Rates and Consolidations?

QUESTION

ANSWER

Franklin D. Roosevelt

GOVERNOR OF NEW YORK

followed by 44 printed pages of exhibits and charts.

"Please let me assure you that I have been greatly interested and thank you for (as you say in your letter) 'advising me and all others who may be interested, of some of the aspects of the power situation in this state, so far as they are raised by the proposed merger.'

"May I respectfully revert to my original letter to you of June 29th? That letter was, of course, sent only to bring out a definite answer to the question as to whether this or other recent mergers were in violation, in letter or in spirit, of any existing statute.

"At the end of your letter you say: 'I am prepared to express an opinion as to whether or not the proposals of the Niagara-Hudson Company constitute a violation of any state law.'

"Will you be good enough to do this? This is really the matter of immediate concern, and if later on there are any other facts or opinions, which I should like to have you consider, I will of course let you know.

"Very sincerely yours,

"FRANKLIN D. ROOSEVELT."

To the question "whether or not the proposals of the Niagara-Hudson Company constitute a violation of any state law," the Attorney General gave a negative answer.

"The anti-monopoly statutes of

this state, as you have seen by my preliminary report, to which I respectfully refer without restatement, have been uniformly held to have no application to the public service corporations, whose rates are controlled by the state. In this conclusion the state and Federal Courts have concurred with the quasi-judicial decisions of the Public Service Commission."

In his reply to the second letter, the Attorney General said:

"As Attorney General, I do not conceive it to be my duty here, nor have you asked me, to discuss any question of the public policy, or to give you any personal opinion of the effectiveness of the statutes purporting to give the state control over its public service corporations, but since you have required my public opinion on the question of the violation of the anti-monopoly statutes, it is my duty to state the law as it exists, not as I or anyone else would wish it to be."

As the Attorney General points out, the question asked by the Governor is one of law and not of what the policy of the state ought to be. The question what the law is should be distinguished from the question what the law should be. One requires merely an interpretation of the statutes and decisions; the other is a fundamental political problem. This article is limited to a discussion of the present policy of the state with reference to monopoly in the public utility field without reference to the more basic question whether that policy is wise or unwise.

Competition is the great regulator of prices in private business. It is the only way, in fact, that such prices can be regulated because the state itself has no power to fix those prices. Monopoly in private business is apt to mean the doom of competition. So monopoly has been regarded as contrary to the public welfare. While the state cannot directly regulate prices in private business, it can do so indirectly by forbidding monopoly and thus keeping the door to competition open. This was undoubtedly why the anti-monopoly or the so-called anti-trust laws were passed both by Congress and the legislatures.

Utility business differs from private business in one very important way. The rates charged for public utility service can be fixed by the state, while the prices charged in private business, as stated, cannot be directly regulated by the Government. The states can say to an electric company, for example:

"You shall charge only so much for your service," provided that charge is not made so low as to confiscate the company's property.

But the state cannot tell a shoemaker how much he shall charge for his shoes, or the farmer or the grocer how much they shall get for what they have to sell. Therefore, the state may deal with rates for utility service directly if it chooses to do so rather than leave their regulation to open competition.

The state may deem direct regulation of utility rates less costly than regulation by competition. The state may, if it wishes, say to the ratepayer:

"We will give you the benefit of low cost of production represented by monopoly and at the same time protect you from the great evil of monopoly, that is to say, extortionate prices."

The Anti-Monopoly Statute Does Not Apply to Public Utilities

"AUTHORITATIVE interpretations of the laws plainly indicate that monopoly in the utility field is now encouraged and competition regarded as unwise.

"FURTHER than this, a provision in a statute expressly authorizing a Commission to approve of transfers of utility property would seem to be conclusive evidence that the state does not intend that an anti-monopoly statute, applicable to private business, shall also apply to public utilities."

The state has not the same need to protect the public from monopoly in the case of a public utility business because of the fact that it can say what the charges for public utility service shall be. Therefore, the encouragement rather than the discouragement of monopoly might be regarded as safe and beneficial in the case of public utilities, while in the case of private business it might be viewed with apprehension because of the power of the state over rates for utility service and its lack of power over the prices charged in private business.

THE state can undoubtedly make anti-trust laws applicable to both private and public utility business if it so desires. The Federal Government formerly did this. In an address at the semi-annual meeting of the Academy of Science, last April, Winthrop M. Daniels, professor of transportation, Yale University, and former Commissioner of the Interstate Commerce Commission, referring to railroad consolidation, said:

"Railroad consolidation, after all, is only a chapter in the larger history of industrial integration. Much the same type of opposition that earlier developed against the growth of industrial combination has, of course, been encountered by railroad carriers.

"In both instances the opposition has centered in the apprehension that the public interest is jeopardized by any departure from relentless, undeviating, and all-pervasive competition between the multitude of relatively small industrial units. The proverbial philosophy ran to the effect that in the multitude of competitors there is safety; or, to use another metaphor, that competition was a tender plant, best cultivated if set out in a large number of containers.

"It need not, therefore, surprise us that a quarter of a century ago the attitude of public opinion toward railroad consolidation was one of hostility, and the attitude of law was one of prohibition."

THE Supreme Court held that the Sherman Anti-Trust Law applied to railroads, and, therefore, under this law railroad combinations were illegal until the passage of the Transportation Act of 1920 by which the policy of the Federal Government

towards railroad mergers and consolidation was changed, and by which consolidation under the authority of the Interstate Commerce Commission is authorized.

If the question were now asked whether railroad consolidations authorized by the Interstate Commerce Commission violate the provisions of Sherman Anti-Trust Acts, the answer, of course, would have to be that they do not, because the Transportation Act of 1920 was passed after the enactment of the Sherman Anti-Trust Law, and shows a change of policy on the part of the Government towards consolidations.

Manifestly, the various states of the United States have the same power as the Federal Government, within their respective boundaries, of passing anti-trust acts and making them applicable both to private and public utility business; and also to except public utilities from the operation of such legislation if they deem it wise to do so. In the absence of any evidence of intention to relieve public utilities, the Anti-Trust Law would undoubtedly apply to them.

For example, on July 16th, the supreme court of Nebraska,* in a case of the State against the Interstate Power Company, held that:

> "Any person or corporation who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce in what is commonly known as electricity within the state of Nebraska, and also, when engaged in business of producing, selling, or distributing the same, shall enter into a contract, combination, or conspiracy to, or who shall give direction or authority to, do any act for the purpose of driving out of business, any other person engaged therein, or who for such purpose shall, in the course of such business, sell any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place, under like conditions, is within the prohibitions of the Nebraska Anti-Trust Act."

The court, however, in this case, points out that the Nebraska State Railway Commission is vested with no regulatory powers over rates for electricity in the place where this controversy arose.

For the sake of clarity let us repeat then that a state can make anti-monopoly statutes applicable to public utility companies. The question raised by Governor Roosevelt is "Has New York state done so?" The answer to that question will apply to other states that have similar laws giving the Commissions power to regulate rates, to grant certificates of public convenience and necessity, and to authorize consolidations.

Have New York state and other states, which are regulating public utilities by State Commissions, changed their policies with reference to monopoly in the utility field?

Is it their purpose to encourage or discourage competition?

The very fact that the states have undertaken to control rates and service should be sufficient evidence of the abandonment of the policy of indirect regulation by means of anti-monopoly laws.

Further evidence of a change of

* Case not yet reported.

policy with respect to unrestricted competition is found in the provisions of the utility laws granting the Commissions power over certificates of public convenience and necessity. New utilities cannot now go into business whenever they please, nor can municipalities bring in competing companies whenever they wish. Competition will be allowed only with the consent of the state acting through its Commission. These provisions of the utility laws have been held to indicate a change of state policy with reference to monopoly and competition in the utility field. In an early New York Commission case, this matter was discussed at considerable length by Commissioner Emmet, who said:

"Since the enactment of the Public Service Commissions Law of 1907, the state of New York has been committed to a somewhat different policy, in respect to competition between public utility companies, from the one which was once in force here. Previously it had not been deemed wise to interfere to any appreciable extent with the natural workings of the competitive system in the public utility field. It had been supposed that by permitting and encouraging practically unrestricted competition between privately owned companies, the state was following the course from which the largest measure of good would accrue to the public at large. The passage of the Public Service Commissions Law definitely marked the end of that attitude upon the part of our state authorities. The new law vested in the Public Service Commissions power to withhold certificates of public convenience and necessity from persons or corporations who, subsequent to the passage of the act, might desire to enter certain public utility fields which were already occupied by established enterprises. The effect of this was to make it impossible for many willing competitors to engage in certain utility enterprises without first submitting to a tribunal representing the entire state the question whether the effect of the proposed competition might not, in the long run, be detrimental rather than beneficial to the public.

"This change in policy was not actuated by any desire on the part of New York state to show favoritism to such persons or corporations as happened to be already interested in public utility enterprises at the time of the passage of the law. The far-reaching regulatory powers of the new Commissions were expected to be effectively used in compelling existing utility enterprises to give the very best service possible that the circumstances of each case permitted. It was expected that the Commissions would insist upon it that the public should for the future receive a very much better quality of service than many of these utility companies had in the past been willing, without efficient regulation, to accord. The underlying thought was that in almost every case, the ultimate sufferer from unrestrained competition between public utilities was, necessarily, the public itself. Experience had demonstrated that competing companies, operating in a single field, were never likely to achieve such secure financial standing as to enable them, collectively, to give as good service as a single well-regulated monopoly, which was kept up to the mark by efficient state regulation, would be in a position to supply. The safeguard, of course, in all such cases—the justification for this seeming approval of the monopolistic idea—lay in the fact that, along with the power to establish a virtual monopoly, the Commission was given the power to compel these monopolies to serve the public more faithfully than had generally been the practice before the passage of the law."

Re Ashmead (N. Y.) P.U.R.1916D, 10.

¶ *"A STATE can make anti-monopoly statutes applicable to public utility companies. The question raised by Governor Roosevelt is 'Has New York state done so?' The answer to that question will apply to other states that have similar laws giving the Commissions power to regulate rates, to grant certificates of public convenience and necessity, and to authorize consolidations."*

SIMILAR views are to be found in scores of decisions in New York and other states that have modern Commission laws. Authoritative interpretations of the laws plainly indicate that monopoly in the utility field is now encouraged and competition regarded as unwise.

Further than this, a provision in a statute expressly authorizing a Commission to approve of transfers of utility property would seem to be conclusive evidence that the state does not intend that an anti-monopoly statute, applicable to private business, shall also apply to public utilities.

If the Sherman Anti-trust Act no longer applies to railroads because the Interstate Commerce Commission has been given direct authority to permit consolidations, certainly the state anti-trust acts, it might be inferred, would not apply to public utilities when the states have given the Commission authority to approve of consolidations. It would be unreasonable to expect, therefore, if the question were raised whether a consolidation violated the anti-trust laws, where Public Service Commissions have been given power to pass upon transfers of utility property, to grant certificates of convenience and necessity, and to regulate rates, the answer would be in the negative. Such is the answer found in the decisions.

ATTORNEY General Ward cites a large number of cases, in support of his view, that utility consolidations are not prohibited by the anti-trust act. In one of these it was held that the organization of a company for the purchase of a controlling interest in certain street railway systems did not violate the anti-monopoly provision of the New York Stock Corporation Law. The court said that this provision did not apply to public service corporations subject to the supervision of the Public Service Commissions.*

In Alabama, it has been held that the exercise by a Commission of its statutory authority to approve a proposed sale of street railway property resulting in a consolidation did not violate a constitutional provision against the granting of special privileges or a provision directing the legislature to provide by law for the regulation, prohibition, or reasonable restraint of common carriers, part-

* Continental Securities Co. *v.* Interborough Rapid Transit Co. P.U.R.1915D, 38, 221 Fed. 44.

nerships, associations, trusts, monopolies, or combinations of capital.*

So the merger of five hydroelectric companies into one large operating company was held not to be in violation of the Idaho anti-monopoly statute, but to inure to the benefit of the consuming public, the investors, and the financial credit of the state in view of the fact that the Commission had ample power under the Public Utilities Act to regulate rates and service.†

THE specific question asked by Governor Roosevelt has also been raised in Tennessee, and there it has been held that the state laws against trusts, monopolies, and unfair competition are not applicable to electric power companies and other public utilities in view of later enactments granting general supervision and regulatory control over such companies to the Public Utilities Commission.*

In a Nebraska Commission case,† Chairman Clarke declared that the purpose of the anti-trust laws of the Nation and state was to protect the people from extortion and burdens incident to an oppressive monopoly. He said:

> "Certainly, where each jurisdiction is clothed with full and complete power of regulation, ample protection is afforded if the regulatory powers are fairly and properly administered. To hold otherwise would admit the inherent weakness of the regulatory powers of the state and Nation, and the very laws designed to protect the people from inconvenience and unnecessary burdens would be the means of their continuance."

In the Alabama Case, above referred to, it was said that a plan for the consolidation of street railways does not create a monopoly in the strict sense of the word, as a monopoly is an exclusive right granted to one person or a class of persons of something which was before a common right; that there was no common right to operate street railroads along the public streets of a city, town, or village.

The Illinois supreme court also calls attention to the sense in which the word "monopoly" was used in the common law.§ The court said:

> "The public policy of the state, as declared by § 22, art. 4, of the Constitution, is not opposed to the elimination of competition in all cases, but only applies where a 'monopoly,' in

* *Ex parte* Birmingham, P.U.R.1917C, 667, 199 Ala. 9, 74 So. 51; Benedict *v.* Western U. Teleg. Co. 9 Abb. N. C. 214; Hatch *v.* American Union Teleg. Co. 9 Abb. N. C. 223; Attorney General *v.* Consolidated Gas Co. 124 App. Div. 401, 108 N. Y. Supp. 823; Attorney General *v.* Interborough Metropolitan Co. 125 App. Div. 804, 110 N. Y. Supp. 186; People ex rel. New York Edison Co. *v.* Willcox, 207 N. Y. 86, 100 N. E. 705; Continental Securities Co. *v.* Interborough Rapid Transit Co. P.U.R.1915D, 38, 221 Fed. 44; Northern Securities Co. *v.* United States, 193 U. S. 197; United States *v.* United Shoe Machinery Co. 247 U. S. 32; United States *v.* United States Steel Corp. 251 U. S. 417; Chicago Board of Trade *v.* United States, 246 U. S. 231; Standard Oil Co. *v.* United States, 221 U. S. 1; United States *v.* American Tobacco Co. 221 U. S. 106; Buckeye Powder Co. *v.* Dupont de Nemours Powder Co. 248 U. S. 55; United States *v.* Reading Co. 226 U. S. 324; United States *v.* Union P. R. Co. 226 U. S. 61; United States *v.* Southern Pacific Co. 259 U. S. 214; United States *v.* Terminal R. Asso. 224 U. S. 383; United States *v.* United States Machinery Co. 258 U. S. 451; United States *v.* International Harvester Co. 274 U. S. 693.

† *Re* Merger of Hydroelectric Cos. (Idaho) P.U.R.1915F, 876.

* Tennessee Eastern Electric Co. *v.* Hannah (Tenn. Ch. Ct.) P.U.R.1928D, 50.

† Scoutt *v.* Nebraska Teleph. Co. (Neb.) P.U.R.1915E, 564, 569.

§ State P. U. C. ex rel. Clow *v.* Romberg, P.U.R.1917B, 355, 365, 275 Ill. 432, 114 N. E. 191.

the sense in which that word was used in the common law, would be thereby created, *viz.*, where competition is eliminated by conferring upon a specified person or corporation the right to exclude all others from engaging in the same business, in the same field of operation, or by upholding the validity of contracts and agreements which place it within the power of certain individuals or corporations to control production and fix prices, thereby resulting in injury to the public. No such consequences can follow the purchase by the American company of a controlling interest in the Interstate company under the authority conferred upon it by the State Public Utilities Act. The American company will not, by this purchase, acquire the right to exclude any other person or corporation from engaging in the telephone business in the same field of operation, nor will it be within its power to arbitrarily limit the service to be furnished to the public, or fix the rates to be charged for the service rendered. The state possesses the right to exercise supervision over public utilities with reference to such matters, and has made provision for the exercise of such right through the State Public Utilities Commission."

So it would seem that Attorney General Ward's opinion that the anti-monopoly statutes do not apply to utilities where Public Service Commissions have the power to regulate rates and authorize consolidation is supported by ample authority.

The state, however, may prevent consolidation of utilities through holding companies if it so wills. Whether it should or should not do so is a question for the legislature to decide.

—HENRY C. SPURR

The Relative Costs of Carrying Passengers in a Street Car and in a Bus

THE following interesting facts concerning the respective operating costs of busses and street cars were brought out by the Maryland Commission in a recent controversy over the operation of busses in the environs of the city of Baltimore:

The records of the United Railways Company showed that it is costing about 51 cents per mile to operate a street car having 44 seats, which is at the rate of 1.16 per seat mile.

The cost of operating a bus with an average of 27 seats was estimated at 32 cents per mile, giving a cost per seat mile of 1.185 cents. This is practically the same as the street car service.

However, the street cars were carrying approximately 6.4 revenue passengers per mile and the railways company was, therefore, furnishing service at the rate of approximately seven seat-miles per revenue passenger for the average fare of 8.2 cents.

The Commission concluded from this analysis that it would require of the bus company a 100 per cent load factor to render service on the same road on a basis comparable with the fare charged by street cars, whereas two bus companies asking permission to render service had estimated a load factor of only 75 per cent and 46 per cent respectively, including short haul riders.

Re Conaway (Md.) Cases Nos. 2920,-2922, June 28, 1929.

Remarkable Remarks

HENRY FORD
Father of the flivver.

"If all the men over 50 got out of the world, there would not be enough experience left to run it."

DR. PHILIP THOMAS
Research engineer.

"Power by radio is feasible on the supposition that we have the ten-centimeter wave, with kilowatts of radio power behind it."

EDWARD N. HURLEY
Former chairman, Federal Trade Commission.

"The only successful examples of socialism in action today are to be found where a vigorous capitalism is at hand to pay the bills."

THOMAS A. EDISON
Inventor.

"A great deal more fuss is being made over hydro-electric power than its intrinsic value warrants. The first and best source of power is coal."

ED HOWE
Retired newspaperman and philosopher.

"Everything in public life is being done wrong; the little creditable accomplishment is private accomplishment."

CHARLES CARROLTON
Upon laying the corner stone of the Baltimore & Ohio Railroad, July 4, 1828.

"I consider this among the most important acts of my life; second only to signing the Declaration of Independence, if even second to that."

PRESTON S. ARKWRIGHT
President, Georgia Power Co.

"No personal interest will be taken in an enterprise by the unfavored where favoritism is practiced, nor by men who think they are the victims of unfair treatment."

SAN FRANCISCO EXAMINER.

"It's like trying to ride through a labyrinth in the dark on a child's tricycle to figure out the highly profitable bookkeeping methods employed by privately owned utilities."

FLOYD W. PARSONS
Economist.

"The fellow who has 10 shares of stock spends as much time watching it and thinking about it as the big trader gives to his own large commitments. This condition destroys individual efficiency."

OLIVER EVANS
A wagoner's apprentice, regarded as mad when he made this prophecy in 1772.

"The time will come when carriages propelled by steam will be in general use, traveling at the rate of 15 miles an hour, or 300 miles a day, as fast as birds can fly. Two sets of railways will be laid . . . and passengers will sleep in these stages."

BERTRAND RUSSELL
British Socialist.

"The country which first discovers the truth about modern generalship, and, therefore, chooses as its commanding officers self-made millionaires, will be invincible in the next war until the other nations are compelled to follow suit."

From an 18th century book of instructions for riding in a London omnibus.

"Do not be officiously polite in handing persons in and out of the vehicle, holding their parcels, etc.; this kind of conduct is always practiced by persons who ride in omnibuses for the purpose of plundering the passengers; therefore, by adopting their ways you will be unwittingly suspected of being one of the gang."

FRANKLIN D. ROOSEVELT
Governor of New York.

"The Democratic policy in New York state contemplates public ownership and control of production of hydroelectric power."

Report of Committee on Public Utility Rates, National Association of Railroad and Utilities Commissioners, 1929.

"Interstate motor bus and motor truck carriers continue to operate without much responsibility to any regulatory body. The policy of the National Government in this regard seems to have been one of "do nothing," and of permitting the states to do nothing, in the matter of regulating interstate motor carriers."

Report of Committee on Public Utility Rates, National Association of Railroad and Utilities Commissioners, 1929.

"One of the outstanding developments in the natural gas business is the long distance which natural gas is being conveyed to some distant markets. Pipe lines from the field to the cities 300 or 400 miles long are quite the usual thing. This speaks well for the development being made by this utility. Because of these pipe lines, the change from manufactured gas to the natural gas is rapidly being made."

The Perils of Paternalism

¶ *Is the growing tendency toward the regulation of American industries and the increased intrusion of Government into business, leading us toward a dictatorship of bureau chiefs?*

¶ *Is "state socialism"—a term that has recently been bandied about in the political arena—merely another name for a policy of governmental domination that has created so much trouble in the past?*

¶ *In the following article the author compares the present era of government regulation with similar eras in history, and points out some of the danger spots.*

By ROY L. GARIS
ASSOCIATE PROFESSOR OF ECONOMICS, VANDERBILT UNIVERSITY

WEIGHED down with cares and crippled with the gout, Charles V resigned the sovereignty of Spain in 1555. Old before his time and with the shadow of death already upon him, he sought quiet and peace in the monastery in Yuste. There he watched the operations of Torriani, maker of clocks and mechanical toys.

Charles V had looked upon his subjects as a father looks upon his children. He was concerned with their every activity. He it was who tried to tell them what to do and what to believe. His paternalistic efforts had been in vain. Now he sat in the old monastery watching Torriani, and as he watched, he tried to make two sand clocks function together. Again and again he tried, but without success. Then there came to him the realization that if it were impossible for him to make two mechanical clocks function alike, how much more impossible was it to expect all his subjects to act and believe alike.

THIS tendency to personal government in Europe was completed by the policy of Louis XIV, who boldly declared, "I am the State." The whole of the nobility of France were merged in the person and court of the King. Louis took care to have it understood that no man who remained upon his estate, who did not dance constant attendance upon his majesty, the King, might expect anything but disfavor and loss.

The Royal Council at Paris regulated, by orders in council, every interest, great or small, in the whole Kingdom. Everybody's affairs were submitted to it; and everybody received suggestions from Paris touch-

ing his affairs. No labor of supervision was too overwhelming for the central government to undertake. Here was domination and dictation greater than Charles had dreamed of, for this busy supervision of local and individual interests was always paternal in intent; and the intentions of the central power were never more benevolent than just when the French Revolution was beginning to break like a storm over the Nation.

When the Revolutionists had accomplished their stupendous work of destruction, they found themselves under the same necessity to govern that had rested upon the monarch whom they had dethroned and executed. They gave voice to a new conception, but they could not devise a new frame of political administration. The result was confusion, committees, the Terror, and—Napoleon. From paternalism and despotism to revolution and anarchy and back to despotism—thus did the pendulum swing.

THESE efforts at personal or paternalistic government were the result of economic conditions, which ultimately resolved themselves into the fundamental question of the proper relation of Government to business.

From what has been stated it is evident that the problem is not a new one. Indeed, it is as old as society. Nevertheless it had its modern genesis, as a problem for us, when the New World was discovered by Columbus, for it was the discovery of America that gave the first stimulus to the formation of a true economic theory. What had formerly been mere counsels became now a system of co-ordinate and reasoned precepts. Countries like France, Italy, and Great Britain watched, with anxious eyes, Spain drawing treasures from her mines in the New World, and wondered how they, too, could procure gold and silver. They thought to find a way by selling manufactured goods to foreign countries, and to this end they tried hard to develop foreign trade and home manufacturing by a complicated and artificial system of regulations. This policy of Government domination and dictation, this paternalistic control of industry, was, what has been called, the "mercantile system."

In its application to the American colonies it took the form of the Navigation Acts, writs of assistance, the Stamp Act, and the Sugar Act. The last was more than a Sugar Act; it was a revision of the navigation system in the interest of a new policy of revenue. It also provided machinery, more efficient than ever before, to enforce the laws of the mother country in the colonies. But most important of all was its absolute prohibition of trade with the French colonies.

IN the middle of the eighteenth century a lively reaction against all systems took place in France, the leaders of which were known as the Physiocrats. The dream now was of a return to "nature," and any arrangement that appeared artificial was repudiated. The whole literature of the eighteenth century was impregnated with this idea, and political science, with Rousseau and Montesquieu, took its inspiration therefrom.

"L'Esprit des Lois" opened with

Regulation — Not Interference

"It should be the end of Government to assist in accomplishing the objects of organized society. Not license of interference on the part of Government, but only strength, and adaptation of regulation.

"The regulation that I mean is not interference; it is the equalization of conditions, so far as possible, in all branches of endeavor; and the equalization of conditions is the very opposite of interference."

—WOODROW WILSON

the immortal words, "Laws are the necessary relations which derive from the nature of things." The role of the legislator, then, if he would secure social order and progress, is limited to developing, as far as possible, individual initiatives, to removing all that might impede them, and to preventing them simply from prejudicing one another. Consequently, the intervention of authority should be reduced to the minimum indispensable to the security of each and all—in a word, to *laissez faire*. Such a conception is certainly not lacking either in simplicity or in grandeur. Its philosophy is embodied in our great Declaration of Independence and in the writings and thinking of the founders of our Government. After 1765 the American colonists contended, not against actual oppression suffered, but against a principle which might lead to oppression. Indeed, the Americans surpassed even the British of that day in what Burke called "the fierce spirit of liberty." The freest people of their age, they were fit for more freedom and could wage a revolution for ideas. The American Revolution was our answer to the mercantilistic policy of the mother country. America became and has remained the leading champion of *laissez faire*. Once more the pendulum had swung from one extreme to the other—from paternalism to individualism, from domination and dictation to freedom, from mercantilism to *laissez faire*.

CARRIED to its extreme, *laissez faire* regarded government as necessary, but as a necessary evil. It was inevitable, therefore, that the extremists would go too far in their efforts to hold back the Government from every thing which could by any possibility be accomplished by individual initiative and endeavor. Inevitably, therefore, the pendulum was destined to swing again toward the extreme of Government domination —toward paternalism—toward what we know today as state socialism.

INDEED, there were and are some who would go even further in their reaction against the individualism born of *laissez faire*. They would abolish the state entirely. It is simply as a traditional measure, in

order to transform individual into collective enterprises, that socialists advocate the extension of the functions of the state. Once this is accomplished they propose to abolish the state altogether. For, far from being in favor of it, they profess the greatest contempt for it as it is today. They are opposed to the "bourgeois state" as they call it—that is to say, the state as politician and employer with the same interests as individuals. They are opposed to state socialism—the Government ownership and operation of the important industries and agencies of production. In their plans for social reorganization, socialists avoid even the use of the word "state," employing rather the word "society." In the socialist scheme, the state is to drop its political character altogether and become simply economic. Eventually it will be no more than the committee of management of a kind of immense co-operative society, embracing the whole country.

THE theoretical socialist would, therefore, abolish the Government or state and have society own and operate all the factors of production.

The state socialist proposes to extend the present functions of the Government or state to permit it to own and operate the major factors of production, or at least some of the most important industries.

The state socialist proposes to put the Government in business. The theoretical socialist proposes to abolish the Government as it is now constituted and in its stead let society operate the great economic organization. Herein lies the distinction between socialism and state socialism and it was doubtless this distinction which Hon. Charles E. Hughes had in mind when he stated in an address in Buffalo, October 26, 1928:

> "What Mr. Hoover meant by 'state socialism' is plain enough. He used the term in its proper sense as applied to the Bismarckian philosophy of the centralization of Government, dominating all the activities of the people. Mr. Hoover is a liberal and is opposed to state socialism."

IT was Bismarck, the great German chancellor, who revived the policy of governmental paternalism and of the state's participation in business.

To Bismarck, state socialism was an antidote to socialism. He said, in substance, to the German people: if you wish certain of the things the theoretical socialists advocate you may have them. But the state will give them to you. You cannot have them by overthrowing or abolishing the state.

Thus was Germany launched into paternalism—a policy and attitude of mind that was to sweep her rapidly to the unfortunate events that followed 1914.

STATE socialism has had a great influence both on the minds of men and on legislation. The American people have been and still are unwilling to adopt its principles and to launch our Government into active participation in business. We have chosen a middle ground between the extremes. Yet it cannot be denied that the great legislative movement known as social legislation, which began in the last quarter of the nineteenth century, is in large measure

What the State Socialist Proposes to Do—

"The STATE *socialist proposes to put the Government in business.*

"He proposes to extend the present functions of the Government or state to permit it to own and operate the major factors of production, or at least some of the most important industries."

due to it. It has certainly rendered great service in its efforts to find some other answer to the old question of human poverty, "What is to be done?" than the mere barren *laissez faire*. Furthermore, its conception of the state as a positive good has done much to destroy the extreme mistrust of the state so evident in our early history. For the state is a beneficient and indispensable organ of society, which can never be abolished. It is no more an evil than is society itself. It is the organic body of society and without it society would be hardly more than a mere abstraction.

Woodrow Wilson stated it thus:

> "Every means by which society may be perfected through the instrumentality of Government, every means by which individual rights can be fitly adjusted and harmonized with public duties, by which individual self-development may be made, at once to serve and to supplement social development, ought certainly to be diligently sought, and, when found, sedulously fostered by every friend of society."

Again he wrote:

> "The schemes which socialists have proposed, society cannot accept and live; and no scheme which involves the complete control of the individual by Government can be devised which differs from theirs very much for the better. A truer doctrine must be found, which gives wider freedom to the individual for his self-development and yet guards that freedom against the competition that kills, and reduces the antagonism between self-development and social development to a minimum. And such a doctrine can be formulated, surely, without too great vagueness. . . . It should be the end of Government to assist in accomplishing the objects of organized society. Not license of interference on the part of Government, but only strength, and adaptation of regulation. The regulation that I mean is not interference; it is the equalization of conditions, so far as possible, in all branches of endeavor; and the equalization of conditions is the very opposite of interference."

FROM this it is evident that Government should not be made an end in itself. The state exists for the sake of society, not society for the sake of the state. The paternalism of Bismarck under his policy of state socialism led him to ignore this fundamental truth. The limit of state functions is, therefore, the limit of necessary co-operation on the part of society as a whole, the limit beyond which such combination ceases to be imperative for the public good and becomes merely convenient for industrial or social enterprise.

There is but relatively little Government ownership and operation in the United States.

The post office is owned and operated by the Government, and also schools, libraries, roadways, and parks are almost exclusively owned and operated by the various branches of the Government. These are, however, usually thought of as nonbusiness enterprises.

In the field of the so-called public utilities, there is some Government ownership and operation, but for the most part private ownership and operation with Government regulation is the rule. Only a few American business men look upon Government regulation of industries affected with a public interest or upon Government aid to business as a conflict with our policy of industrial individualism.

For example, no one opposes the Government regulation of the railways today, while but relatively few favor their ownership and operation by the Government. They conceive the function of the Government to be that of promoting, aiding, and regulating business.

The Government in business as advocated by the state socialists is neither necessary nor expedient. Most Americans are willing to acquiesce to a policy of regulation, however drastic, provided the ownership and operation continue under private initiative and control.

In European countries government enterprise has been carried much further as the following quotation indicates:

> "Monopolies on tobacco, gunpowder, matches, salt, and camphor; ownership and exploitation of coal mines, oil lands, water works, heat, light and gas works, railways, telephone, and telegraphs; operation of hotels, theatres, banks; printing and publishing, all forms of insurance, grain elevators, slaughtering houses, drug stores, lotteries, restaurants, and cold storage warehouses may be mentioned as some of the businesses in which National, state, and local governments engaged. This list could be swelled almost indefinitely."

This quotation is also applicable in some extent to Australia and New Zealand. The United States is the classical land of private enterprise. But changes are advocated and others are under way even in this country which demand the thoughtful consideration of the American people.

In his inaugural address on March 4th, President Hoover stated:

> "Regulation of private enterprise and not Government ownership and operation is the course rightly to be pursued in our relation to business."

Such a sound statement followed logically from the conclusions he had drawn in his address in New York city, October 22, 1928, in which he discussed the relation of Government to business. Having criticized the proposals that the state should purchase and sell liquor, that the Federal Government should directly or indirectly buy and sell and fix the prices of agricultural products; and that the Government should go into the hydroelectric power business, he declared himself to be opposed to a huge program of Government in business. He concluded:

> "Even if the governmental conduct of business could give us more efficiency instead of less efficiency, the

fundamental objection to it would remain unaltered and unabated. It would destroy political equality. It would increase rather than decrease abuse and corruption. It would stifle initiative and invention. It would undermine the development of leadership. It would cramp and cripple the mental and spiritual energies of our people. It would extinguish equality and opportunity. It would dry up the spirit of liberty and progress. For these reasons, primarily, it must be resisted."

President Hoover has always advocated the very strictest control of public utilities, including power plants, their capitalization, rates, and service.

WHILE Secretary of Commerce, Mr. Hoover stated on October 29, 1924, in the course of an address:

"There is scarcely a single utility today that is not under public control through some governmental Commission, local or national. These Commissions today fix the rates, the issues of stock, the time tables, the car service, the profits. Our great national water powers are reserved to the Government through 50-year leases, under public control. And our Commissions are not alone preventing abuse; they are maintaining initiative, enterprise, and progress in our railway and other utilities, as witness their enormous growth and constantly improving efficiency and service. . . . To what ever extent we have failed to control, whether it be through over control or through insufficient control, it is a challenge to us to perfect our system. There have been mistakes and will be others. But I may say at once that if the American people have not the intelligence, if they have not the character, if they have not the political mechanism by which private competition can be maintained and yet abuse can be prevented, then they do not possess the intelligence, the character, or the political mechanism by which they can undertake the gigantic operation of these enterprises."

Mr. Edison is of the opinion that only a small part of the Nation's needs will ever be met by hydroelectric plants, and that the question of ownership and operation of such plants by the Government has received an emphasis far beyond its just merits.

On November 1, 1928, he stated that

"Developed water power today is but a small fraction of the power required in the country, the balance being essentially generated from fuel burning plants. Approximately 80 per cent of the undeveloped water power of the country lies in the Rocky Mountains and on the Pacific coast region. The large market for power, unfortunately, is east of the Mississippi. . . .

"Moreover, by no stretch of the imagination can the inhabitants of Rhode Island, Massachusetts, Connecticut, New Jersey, Ohio, Indiana, Delaware, Maryland, Florida, Mississippi, or Louisiana, for example, enjoy any material advantages from water power, because these states possess no undeveloped water powers of any consequence.

"If experienced people engaged in the development of power find it unprofitable to develop hydroelectric situations, is it logical that the Government will possess any more successful executives than the industry itself has developed?

"Two outstanding factors characterize water power development as distinguished from steam development. The cost of hydroelectric power is essentially one of investment. Steam generation, however, is generally one of smaller investment

plus a larger cost for fuel and operation of the plant itself. The electrical output from most water power stations is dependent upon the seasonal flow of water and requires for economical operation a close tie-in with fuel-burning plants that are subject to operation in accordance with the demands for power.

"The hydroelectric plant, on the other hand, in order to be utilized to its greatest efficiency, is thus generally dependent upon operating in a net-work system with fuel-burning plants in order to utilize the water supply at the time the water is available. . . . The charge has been made that when coal has been exhausted the country will be dependent upon water power alone. The coal mined to date is less than 1 per cent of the available supply. On the other hand, the efficiency of coal utilization is low and has steadily increased with the development of the art to about 20 per cent, with the possibility of this going still higher. Water power now operates at over 90 per cent and has about reached perfection in its utilization.

"With the continued improvements in the burning of fuels yet to come to offset the increased power demands, the coal supply will carry us indefinitely into the future. Water power, then as now, will be quite inadequate to meet the demands for electrical power, and posterity will have to develop other substitutes. But that is so far in the future that it is a matter of small concern today."

FROM this it is evident that any participation of the Government in the hydroelectric power industry puts it in direct competition with the indispensable privately owned and operated fuel-burning plants. Regulation, yes, even drastic regulation and reorganization, if such is necessary to protect the interests of the public. Surely the burden of proof is on those who advocate the Government operation of such business.

Business men in America have not taken kindly to economic doctrines bearing the visible label of paternalism. But it is none the less true that in local groups they have and do sometimes advocate the principles of state socialism, which they would ordinarily be opposed to. Thus, no American city seems complete without an imposing post office. The number and cost of post offices always cause complaint—but never from the business men of a community about to acquire a new building. It is the distant taxpayer who kicks.

HON. Samuel O. Dunn is of the opinion that the reason we have so much Government in business is that the politicians give business men what they actually want. In a recent article he stated:

¶ "THE state socialists who wish to see the Government participate to a greater and greater extent in business are numerous and powerful and, therefore, dangerous to our form and philosophy of Government."

"Regardless of the general principles to which a man professes to adhere, the correct answers to two questions will afford an infallible test of whether he really is opposed to excessive governmental activities:

"Will he favor an expenditure by the Government of the taxpayer's money in his own community or territory which he would oppose if it were proposed to make it in some other community or territory?

"Will he favor a form of Government interference in other people's business that he would oppose in his own business?"

Without doubt many business men are constantly, whether consciously or unconsciously, answering each of these questions in the affirmative. In this way only is it possible to account for the increasing strength of state socialism in this country. The theoretical socialists are relatively scarce and powerless. But the state socialists who wish to see the Government participate to a greater and greater extent in business are numerous and powerful and, therefore, dangerous to our form and philosophy of Government.

Thus seventeen states have gone into the business of providing workmen's compensation insurance through state funds, in seven of which states the Government prohibits private companies from issuing it. In these seven states the Government thus has a monopoly of workmen's compensation insurance. In the other ten states the business is competitive. Now workmen's compensation insurance is absolutely necessary and sound but is it the duty of the state to enter the insurance business to secure it? Is not regulation by law much more to be preferred, and is it not based upon sounder economic principles?"

"INLAND Waterways Corporation" is merely another name for the Government of the United States, under which it operates a barge system on the Mississippi and Warrior rivers in competition with the railroads. The Government's lines operate between St. Louis and New Orleans, and between St. Louis and St. Paul, on the Mississippi, and between Birmingham, Cordova, and Mobile on the Warrior. The report of the Inland Waterways Corporation for 1925 showed a net income of $268,-855.28 after allowance for depreciation. This made no allowance, however, for interest on the money advanced to the corporation by the United States, none for Government expenditures in maintaining the navigability of the Mississippi, and none for the taxes which would be assessed upon a private corporation. In order to help the Government's barge line compete successfully with the railways, Congress has given the Interstate Commerce Commission the power to fix the through rates and through routes the railways must make.

Thus, the Government is not only competing with the railways, but it is using its regulating power to dictate terms to them to make it certain the Government will compete successfully. Furthermore, the Government's rates are lower, which means that if the Government finds its earnings inadequate in this or any other industry it operates, it can compel the taxpayers to make up the deficit. The private business must live upon

its own earnings. Almost every one will agree that our inland waterways should be developed, but not under conditions such as these.

STATE socialism such as this is unnecessary and is a step along a path full of dangers. For where does the path lead to? What is the end?

Will such activities as these—and many other such could be listed—lead us into a socialized democracy in which everything will be done for us because it can be done for us better than we can do it for ourselves?

Does the development of such a program of state socialism foreshadow the time when we won't have to bother about what goes on in our state capitols and in Washington?

Are we heading toward a dictatorship of bureau chiefs?

These are things for the American people to think about seriously. They are problems the American business men must face squarely and fairly, for in no other way can they be solved.

"BUREAUCRACY," said President Hoover in his address in New York city, "does not tolerate the spirit of independence; it spreads the spirit of submission into our daily life and penetrates the temper of our people, not with the habit of powerful resistance to wrong, but with the habit of timid acceptance of irresistible might. . . . You cannot extend the mastery of the Government over the daily working life of a people without at the same time making it the master of people's souls and thoughts. Every expansion of Government in business means that Government, in order to protect itself from the political consequences of its errors and wrongs, is driven irresistibly without peace to greater and greater control of the Nation's press and platform. Free speech does not live many hours after free industry and free commerce die."

Hon. Elihu Root had the same thought in mind when he stated in the Senate, August 22, 1913: "The strength of self-government and the motive power of progress must be found in the characters of the individual citizens who make up a Nation. Weaken individual character among a people by comfortable reliance upon paternal Government and a Nation soon becomes incapable of free self-government and fit only to be governed: the higher and nobler qualities of national life that make for ideals and effort and achievement become atrophied and the Nation is decadent."

THOMAS Jefferson's immortal wisdom: "that government is best which governs least" expresses the matter most effectively. Lincoln cautioned against the Government intervening in any enterprise that individual citizens can do as well for themselves. Charles Evans Hughes has said: "Our Government is based on the opportunities of individualism."

Individual reward for individual merit, with Government cast in the role of umpire, guaranteeing a fair course and no favors—is not this the true relationship of Government to business?

Cannot we profit from the lesson Charles V learned, from the sand clocks? Or, must we too learn only by painful experience?

The Progress of Regulation of the Gas Utilities

A Summary of the Decisions of the Commissions During the Past Year

By ELLSWORTH NICHOLS

Some time ago there appeared in the motion picture theaters a photoplay in which the supplanting of gas by electricity was an important element in the plot. An immediate plunge in gas stocks followed the appearance of electric arc lights on city streets, causing havoc in the finances of some of the characters.

But the prophecy of doom to the gas industry has not been fulfilled. We have discovered that electricity has its place and gas has its place in our country's life.

The rapid expansion of the gas business into fields other than lighting has gone forward, and the use of gas in these fields has called for more complicated rate schedules; the old flat rate has become obsolete—it cannot fairly meet the demands of the various classes of gas customers. Under the supervision of the Public Utility Commissions, up-to-date rate structures have developed. A brief review of the progress of the industry as shown in reports of courts and Commissions, appearing during the past year, is of more than passing interest to those who are interested in the regulation of gas utilities.

Promotional Rates

The outstanding developments in gas rate making have been in connection with what may be called "promotional rates;" that is, rates which encourage greater use of gas for cooking, heating, industrial purposes, and the like. Service charges and block rate schedules that give a lower rate per unit as consumption increases have been the centers of interest.

In New Jersey, the Public Service Electric & Gas Company filed, in December 1928, new gas rate schedules which would increase revenues about 1.5 per cent. More important than this general increase, however, the new rate structure provided increases for consumers who use very little gas and decreases for those who use larger amounts. This proposal was bitterly opposed in newspapers, at mass meetings, and before the Commission. The Commission, after several hearings, approved the schedules in principle but reduced the rates in each of

the lower blocks below the figures proposed by the company.

The Commission reviewed the development of rates from the flat charge based on the number of lights installed by the customers, through the stages where meters were developed, the straight line meter rate of one block was put into effect, and then the service charge was developed. It was said that as the service charge was generally misunderstood, it had led to the adoption of small initial blocks of gas, at a comparatively high rate, which carried the equivalent of a service charge in the first block. The first block of the proposed schedule was 200 cubic feet for $1. Under the former schedule a customer could use 800 cubic feet for a minimum bill of $1. In regard to this the Commission said:

> "If the cost of gas be taken at 9.5 cents per hundred, 800 cubic feet would cost 76 cents, leaving only 24 cents for customer cost or less than half the figure found by the expert for the municipalities, or taking the customer cost of 58.9 cents . . . from the $1, would leave the cost of 800 cubic feet of gas at 41.1 cents or 5.1 cents per hundred. On the other hand, the customer using more than the minimum amount of 800 cubic feet must pay 12 cents per hundred even if he use as much as 20,000 cubic feet. This situation is clearly discriminatory as against the latter class of customers."

The Commission pointed out that not only were the present rates discriminatory as between different classes of customers, but that they had serious consequences for the company, as under modern social and industrial conditions, the gas industry had practically lost its lighting business and was dependent principally upon the use of gas as fuel. Here it was in competition with other fuels, such as oil and coal. Therefore, the Commission concluded that the cost of gas must be placed more nearly on a competitive basis in order to prevent loss of business and to create an additional demand for gas for cooking, water heating, house heating, and industrial purposes so that the future stability of the industry might be assured.

The Commission then approved a rate schedule that provided for 400 cubic feet of gas for $1, with the next 1,000 cubic feet at 11 cents per 100 cubic feet, and the next 48,600 cubic feet at 9.5 cents per 100 cubic feet, thereafter in accordance with the schedule filed by the company.*

The handling of this situation by the New Jersey Commission is typical of the manner in which these promotional rate schedules have been treated by other Commissions where they have been approved.

* *Re* Public Service Electric & Gas Co. (N. J.) June 27, 1929.

The Service Charge

The service charge has occupied the attention of some of the other Commissions. This has been a point of dispute for many years, but the charge has usually been approved, although, in some cases, owing to the antagonism of consumers (as in the case of the New Jersey company), the simple service charge has given way to a form of block rate. The Boston Consolidated Gas Company filed a schedule early this year, which con-

tained a gas service charge. This was protested by certain customers, but the charge was approved by the Massachusetts Commission with the statement:

> "We believe that the cost to the company of the maintenance of property exclusively used by a customer, together with the services required exclusively on his account, amounts, on the average, to at least 50 cents a month, whether he uses any gas or not. A service charge of 50 cents a customer, plus the commodity rates provided in the proposed tariff, will return to the company, on the same volume of business as that of 1928, an income not greater than obtained under the present rates.
>
> "The advantage to the company to be derived from the proposed rates is the reduction in the commodity rate, which, it is hoped, will induce a larger use of the product and will more nearly insure the company against the carriage of customers at a loss." *

* *Re* Boston Consolidated Gas Co. (Mass.) August 7, 1929.

THE MINIMUM CHARGE

IN Georgia, the question whether a minimum charge or a service charge was better came before the Commission. A gas customer who paid $1 a month minimum charge, and entitled thereby to secure approximately 650 cubic feet of gas, was found to be securing service paid for by customers who used larger quantities, where the fixed cost to each customer per month was not less than $1. A service charge of $1 a month was ordered to be placed into effect instead of the former minimum charge.*

But in Missouri a different conclusion was reached. The minimum charge per month, which allowed the consumer to take earlier advantage of a lower step in the rates but which was also adequate to cover the expenses of serving the individual consumer, was considered preferable to the service charge—where the resulting revenue was practically the same in either case—in view of the popular misunderstanding of the bare service charge. Although the Commission favored the minimum charge, it left no doubt as to its recognition of the principle that general administration expenses, such as meter reading, billing, collecting, and consumers' complaints, caused by each consumer regardless of whether the gas is used or not, should be divided equally among all meters in addition to the investment as allocated to each consumer, and that the consequent fixed charges should be borne by each consumer.†

WHETHER a service charge, a minimum charge, or some sort of block rate not containing a special charge may seem best to a particular regulatory body, we cannot escape the fact that during the past year there has been a uniform recognition of the desirability of constructing rate schedules which compel the small users to meet the cost of carrying them, and which tend to stimulate gas

* *Re* Georgia Power Co. (Ga.) P.U.R. 1929B, 309.

† *Re* Laclede Gas Light Co. (Mo.) P.U.R. 1929A, 561; P.U.R.1929C, 561. See also *Re* Springfield Gas Light Co. (Mass.) P.U.R. 1929A, 229.

consumption by making attractive rates for larger use.*

* Santa Barbara *v.* Southern Counties Gas Co. (Cal.) P.U.R.1928E, 767; Cronin *v.* West Boston Gas Co. (Mass.) P.U.R.1928D, 181; *Re* Consumers Power Co. (Mich.) P.U.R. 1928D, 698; Customers *v.* Brooklyn Borough Gas Co. (N. Y.) P.U.R.1929D, 433.

VALUATIONS

VALUATION questions, which come come up in most rate controversies, have received due consideration in the reports of the Commissions, but nothing of a startling nature is found in this department of investigation. The Commissions have applied the well established rules of valuation, and have reiterated some of the fundamental principles.

It has again been pointed out, for example, that in determining the present fair value of the property of a public utility, neither original cost nor reproduction cost new, considered separately, are determinative, but consideration should be given to both original cost and present reproduction cost, less depreciation, together with all the other facts and circumstances which would have a bearing upon the value of the property. From a consideration of all these a fair present value is to be determined.*

IN the valuation of natural gas property the actual cost of leases for the exploitation of gas has been declared to be the only basis which should be used for rate-making purposes, notwithstanding the possibility of establishing a market value. The Ohio Commission has ruled that rates cannot be made to depend upon the exchange or market value of natural gas leases. Nor was the Commission convinced that the judgment, as to the value of natural gas leases, of experts, themselves interested in the natural gas business, was unbiased, in view of the importance which the value of such property might bear to their own interests, and in view of the absence of a market for such leases.†

In a Supreme Court decision, book value was accepted as an assumed value of a gas field made by the public utility company, in the absence of convincing evidence of a higher value. An estimate of the value of the plant was rejected when arrived at by estimating the amount of natural gas in the ground, which would remain available for appropriation for eighteen years, and applying to that quantity an assumed price for gas in an unregulated market, with a further speculative prediction as to the cost of transporting the gas to such a market.‡

A WELL settled system of public utility regulation is indicated by the absence of new and revolutionary decisions in regard to valuation, and the same is true of the subject of operating expenses. A few rulings are, however, worthy of mention.

The Wichita Gas Company was

* *Re* Laclede Gas Light Co. (Mo.) P.U.R. 1929A, 561; Hominy Light & Gas Co. *v.* State, 130 Okla. 258, P.U.R.1928D, 743, 267 Pac. 235; *Re* Fort Worth Gas Co. (Tex.) P.U.R.1929A, 136.

† *Re* Logan Gas Co. (Ohio) P.U.R.1929A, 232.

‡ United Fuel Gas Co. *v.* Railroad Commission, P.U.R.1929A, 433, 49 Sup. Ct. Rep. 150.

faced with an alarming decrease in consumption of gas. In a proceeding which finally found its way into the Kansas supreme court, the witnesses for the company and for the Commission agreed that financial success of the company depended on increasing consumption of gas. New business expense was incurred in putting into effect a plan for increasing consumption. There was a dispute as to whether the expense should be amortized over a period of years, and the court sustained the finding of a referee that the Commission was not the company's business manager, and as the company had a business manager of its own, who must be allowed good faith, exercise of judgment, discretion and initiative, the expenditures should be allowed, as the company contended, as a normal annual expense.*

* Wichita Gas Co. *v.* Public Service Commission, 126 Kan. 220, P.U.R.1928D, 124, 268 Pac. 111.

Loss from Abandonment

Frequently the Commissions are called upon to decide whether the loss from abandonment of utility property should be charged off, during a period of years, as an expense of the business. In such a case the Montana Commission ruled that if it should be made to appear that, by reason of an advantageous supply contract, a portion of a utility's property previously devoted to public service is rendered obsolete or unnecessary, equity requires that it be permitted to amortize the value of such superseded property, less salvage, over a term of years out of earnings.*

Likewise, in California, the difference between the amount of plant investment, rendered nonoperative by substitution of service supply, and an amount which should have existed in the depreciation reserve, had it been properly accounted for since the date of installation, was amortized over a period of years. The California Commission held, however, that rates should not include any amount for amortization of a gas generating plant rendered nonoperative by the substitution of a natural gas supply, over and above a depreciation reserve which would have existed in a much greater amount if properly accounted for since the date of installation, and had the property been operated under one ownership since the inception of the original company.†

* Public Service Commission *v.* Great Northern Utilities Co. (Mont.) P.U.R.1929B, 176.

† Santa Barbara *v.* Southern Counties Gas Co. (Cal.) P.U.R.1928E, 767.

Taxes

The Montana Commission has said concerning taxes that the proper method of including Federal income tax in the operating expenses of a utility is first to include the total tax in expenses and then deduct the amount of the resulting exemption from the fair return otherwise allowed. There were said to be divergent views on this point.*

* *Re* Great Falls Gas Co. (Mont.) P.U.R. 1928E, 803.

These taxes are usually accepted as a proper charge to operation.*

A natural gas utility in Montana was, by Commission order, relieved of the burden imposed by a franchise requiring the payment of a gross receipts tax which operated to the unjust advantage of the taxpayers as against the utility's ratepayers. The Commission was of the opinion that the state, armed with police power and acting through a designated agency invested with the exclusive control, supervision, and regulation of public utilities, in the exercise of such powers, may strike down such a tax provision of a municipal ordinance.† This is an unusual and interesting decision, and is not in harmony with the views of some other regulating bodies. Whether it will be upheld in court remains to be seen. In this particular case, enforcement of the Commission order was restrained in Federal Court, at the suit of the utility, on the ground of confiscation. The tax question was not passed upon by the Court.

*Re Clarksburg Light & Heat Co. (W. Va.) P.U.R.1928E, 728.

†Re Great Falls Gas Co. (Mont.) P.U.R. 1928E, 803.

Intercorporate Relations

The relationship between public utilities and corporations which control them has during the past year received much public attention. An important decision on this subject was made by the Supreme Court when it held that a Commission which found that a natural gas utility should be credited with 50 per cent of the net proceeds of the sale of gasoline extracted by an affiliated company from natural gas, when based upon substantial evidence, including evidence of a satisfactory return to the extraction company, should not be disturbed, notwithstanding an agreement between the companies that the utility should receive one-eighth of the gross profits from the gasoline.* This is of special interest when considered in connection with the general rule previously announced by the court that contracts made by directors, in the absence of a showing of bad faith, are to be respected.

On this question of intercorporate relations, we further find that the Ohio Commission, in determining whether or not the stockholders of a natural gas company were receiving a fair return on the property, considered the profits accruing from an arrangement by which another company, commonly owned, extracted gasoline and retained all the profits.†

The Texas Commission, in fixing rates of a distributing utility that had a separate corporate entity, but with close intercorporate relations with its supply company, has gone so far as to treat the two companies exactly as if they were but one corporation which had for its own convenience divided its operations into furnishing and distributing divisions. The Commission refused to make any

*United Fuel Gas Co. *v.* Railroad Commission, P.U.R.1929A, 433, 49 Sup. Ct. Rep. 150.

†*Re* Logan Gas Co. (Ohio) P.U.R.1929A, 232.

finding as to the reasonableness of a supply contract, whereby the supply company required that the operating company pay two-thirds of its gross receipts. There was no available evidence sufficient to permit the Commission to make a definite finding as to the value of the service.*

But the Montana Commission has stated that in a rate proceeding of a distributing natural gas public utility, it is bound to proceed upon the assumption that the rates charged to a utility by a pipe line company, according to the terms of the supply contract, are not unreasonable. It left this question for determination upon a proper proceeding.† Still, it has been held in the same state that a Commission, in accepting payment by a local utility to an affiliated utility in compensation for administration services as legitimate operating expenses, should require proof of actual service and evidence of the reasonable value thereof.‡

In Kansas it was held that the sale of gas by a pipe line company to a gas distributing company must be regarded as an instance of an ordinary bargain between seller and buyer notwithstanding intercorporate affiliations, where there is no evidence of agency or abuse of corporate privileges in such relation, and no evidence that a supply of gas is available from other sources at a cheaper rate.§

* *Re* Fort Worth Gas Co. (Tex.) P.U.R. 1929A, 136.

† *Re* Great Falls Gas Co. (Mont.) P.U.R. 1928E, 803.

‡ Public Service Commission *v.* Great Northern Utilities Co. (Mont.) P.U.R.1929B, 176.

§ Wichita Gas Co. *v.* Public Service Commission, 126 Kan. 220, P.U.R.1928D, 124, 268 Pac. 111.

CONSOLIDATIONS

AMONG the important consolidation proceedings brought before the Commissions is that of the Consolidated Gas Company of New York. Authority was sought to acquire the outstanding common capital stock of the Brooklyn Edison Company. Approval was granted upon proof that the resulting unified management, practices, and policies would enable future financing to be more advantageous to all parties as well as to keep pace with city growth, produce great economies in location of generating stations, as well as economies in capital expenditures and operating expenses. The Commission made it plain that it was not necessary to write into the consolidation plan as a condition of its approval any equivalent for the competition which was eliminated, in view of the continuing regulation which would protect the people from the inertia of a monopoly.* This is a distinguishing feature of regulated public utilities.

* *Re* Consolidated Gas Co. (N. Y.) P.U.R. 1928E, 19.

QUALITY OF PRODUCT

THE quality of gas is a matter deserving attention. Some have urged that it is best to lower the heating standard and make a corresponding adjustment in rates. The point of maximum efficiency with the greatest

economy is the goal. Further study of this subject appears in recent Commission reports. Notwithstanding a general order calling for an average heating value of 570 B.T.U., the Missouri Commission was of the opinion that a satisfactory gas service could be furnished to the public by using gas containing a heating value of 480 units per cubic foot, but that the lower heating value should be reflected in rates to be charged, in view of the economy of manufacturing gas with a lower standard.*

EARLY in 1928 the Illinois Gas Association applied to the Commission for the revision of a rule fixing the average heating value of gas at 565 B.T.U. with a minimum of 530 B.T.U. per cubic foot. The Commission had previously authorized the Western United Gas & Electric Company, as an experiment, to reduce the heat value of its gas to not less than 450 B.T.U. per cubic foot, suspending the rule for that purpose. This company accepted the order and established its standard at 480 B.T.U. per cubic foot at the plant.

The testimony of many witnesses disclosed much interesting data in regard to the composition of gas and its behavior, both under laboratory conditions and actual operating conditions. The necessity for changing rates when standards are changed was also considered.

A reduction of heating units supplied in gas was believed to work to the advantage of consumers where there was evidence that there was less variation in the heating value owing to condensation and subsequent evaporation, which resulted in greater uniformity of pressure. The Commission concluded that since each company manufacturing gas in Illinois manufactured under conditions peculiar to it, it would be unwise at the time to establish a rule other or different from the existing rule, and the petition of the Illinois Gas Association on its own motion was dismissed.

The Commission pointed out, however, that owing to the fact that operating conditions in different plants were different, it was equally unwise for the Commission to take the position that there should be no variations from the rule established. It was found that the Western United Company, under its lower standard, was rendering a satisfactory service to its customers.†

THE Massachusetts Department indicated that it would permit a reduction of B.T.U. content in gas supplied by a city utility from 528 to 500 upon the filing by the company of a corresponding reduction in rates or else a presentation of the matter at a public hearing in order to give protestants an opportunity to be heard.‡ But after the hearing the Commission refused to authorize an experimental change in the standard because opposition to the change was so pronounced that a fair trial of the substituted standard, without the patrons' co-operation, could not be had.§

* *Re* Missouri Nat. Gas Co. (Mo.) P.U.R. 1929B, 465.

† *Re* Illinois Gas Asso. (Ill.) P.U.R.1928D, 220.

‡ *Re* Springfield Gas Light Co. (Mass.) P.U.R.1929A, 229.

§ *Re* Springfield Gas Light Co. (Mass.) P.U.R.1929B, 433.

CONSTERNATION prevailed among the customers of a gas company in New York when it was learned that, under an antiduplication agreement, the company was to withdraw from the field and turn its customers over to another company. The latter had higher rates. A complaint was made to the Commission, but it was ruled that since the gas company quitting the area with the approval of the Commission, it was not obliged to continue service to those customers already attached to its mains notwithstanding the fact that such patrons would experience a rate increase when served by the other company. As to the rates of the latter company, the complaints of persons notified that they would be served by the new utility at higher rates after a certain period were dismissed as against the new company because no question was raised concerning the reasonableness of the rates to be charged.*

* Customers *v.* Nassau & Suffolk Lighting Co. (N. Y.) P.U.R.1929C, 446.

RIGHT OF WITHDRAWAL

BEFORE concluding this resume of the activities in the field of regulation during the past year, we should notice a case which was decided by the United States Supreme Court involving the right of a public utility to withdraw its service. A gas company was not allowed the rates which it believed proper, and thereupon threatened to shut off service. The Commission held that it could not do this, and the controversy finally reached the highest court.

The Supreme Court laid down the rule that a public utility company may be compelled by a state, acting through its Commission, to continue to use present facilities to supply an existing need so long as it continues to do business in the state. Furthermore, it was held, a Commission, acting under a statute forbidding the withdrawal of public utility service without the permission of the Commission, may prevent such abandonment of service when threatened because the utility does not receive the rate demanded.*

THERE has been some hostility to the plans of gas companies to increase business by revising rate schedules. A misunderstanding of the economic principles involved has been largely responsible. Commissions have uniformly given careful study to the problem and have done a great service to the utilities and the consumers by explaining in their reports the true situation.

Even in communities where rate proposals have seemed inadvisable because of local opposition, the process of education has been furthered, and the course of regulation during the past year gives promise of a better understanding in the future—when the public may better realize that a healthy gas utility with fairly constructed schedules will benefit the customers and give them greater advantages in the use of gas at low rates for fuel.

* United Fuel Gas Co. *v.* Railroad Commission, P.U.R.1929A, 433, 49 Sup. Ct. Rep. 150. See also Cleveland *v.* East Ohio Gas Co. (Ohio) (not yet printed).

PUBLIC UTILITIES FORTNIGHTLY
MUNSEY BUILDING ✣ WASHINGTON, D. C.

October 17, 1929.

Dear Sir:

At the recent convention of the National Association of Railroad and Utility Commissioners at Glacier Park, Montana, Governor Reed of Kansas expressed his belief that the states have lost control of regulation of the utilities through decisions of the Federal Courts.

There is nothing new in this attitude. From time immemorial the decisions of courts have been criticised by those with whom the views of the courts have differed. The courts have sometimes responded with stinging rebukes. In reply to adverse criticism in criminal cases, for example, it has been said:

> "The rogue ne'er feels the halter draw
> With a good opinion of the law."

Nor does an honest man who is a party to a civil suit and who has an abiding faith in the justice of his cause generally have a very good opinion of the court which decides against him.

The states, of course, have not lost control of regulation of public utilities by decisions of the Federal Courts. These Courts have held that the Constitution of the United States prevents the states from confiscating your property or mine; and that public utilities, although their property is devoted to a public use, are within this protection of the Constitution. It is the application of this rule to public utilities that the critics object to.

Our ideas as to what constitutes confiscation may depend somewhat upon whose property is sought to be taken. If the state comes along and wants your house for a public purpose would it not be rather comforting

to have the Federal Courts behind you if you thought the state ought to pay for it?

The Federal Courts have held that present value and not prudent investment is the confiscation yardstick. Suppose the state demand your house for a public purpose and the house is now worth twice what you paid for it and it would cost twice what you paid for it to replace it by a similar house. You would not like it, would you, if the state would say, "No matter what the property is now worth, we shall pay you only what it cost you." Your opinion of a court which sustained you would be favorable, would it not?

Perhaps you will think that the court's view is all right as far as your property is concerned but not right in the case of property of public utilities.

Well, this much, at least, can be said for the decisions of the Federal Courts. They make no distinction between the rich and the poor, between the owner of a little house and lot and the owner of a share of stock in a public utility company. They hold that all are equally entitled to the protection of the Constitution.

All this talk about interference by the Federal Courts with state regulation of utilities usually amounts to is the begging of the question of what constitutes confiscation.

We think that the critics of the Federal Courts would not like to have the rule of constitutional interpretation they insist on applied generally. They do think it should apply to property devoted to a public use.

The fact that the Federal Courts hold to the contrary does not mean that the states have "lost control of regulation of utilities."

Yours very truly,

Henry C. Spurr

HCS:S

The "Cost of Construction"

An Interpretation Within the Meaning of the Law

By DAVID LAY

THERE seems to be some misunderstanding as to the significance of the recently published opinion of Charles A. Russell, solicitor of the Federal Power Commission, as to what constitutes cost of construction under the recapture provision of the Federal Water Power Act. In some quarters it has been regarded as having a bearing on the prudent investment—fair value controversy in valuations for rate-making purposes; but the opinion of Solicitor Russell was on a much narrower point. The section of the law construed reads as follows:

> "In order to aid the Commission in determining the net investment of a licensee in any project, the licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission, in such detail as the Commission may require, a statement in duplicate showing the actual legitimate cost of construction of such project, addition, or betterment and the price for water rights, rights of way, lands, or interest in lands."

THE question Solicitor Russell discussed was what constitutes actual legitimate cost of construction within the meaning of the law. A contention was made, in effect, that a suitable return on the capital invested constitutes a part of the cost of alterations; but Mr. Russell holds that it does not, and he cites a number of court decisions in support of that view. He also points out that under the Interstate Commerce Commission rules cost seems to be limited to actual expenditure of money or its equivalent except perhaps in case of interest on carriers' own funds expended for construction purposes. No provision is made for apportionment of salaries and expenses of officers between operating expenses and construction. Before the pay of executives and general officers and other general office employees may be charged to construction they must be "engaged exclusively on construction work."

He says that the Federal Power Commission classification in regard to overhead costs does not permit the addition to fixed capital accounts of arbitrary percentages to cover assumed overhead charges but only as requiring the assignment or apportionment to particular accounts for tangible property of actual and necessary overhead expenditures. In the opinion of the solicitor, actual legitimate cost of construction of each

project, eliminating all overheads except those mentioned as part of the cost, is limited to the actual dollars and cents entering into the actual legitimate cost of construction of the project. The general rule of rate making is that a utility company is entitled to a return on the fair value of its property. The question whether, in a hydroelectric development, the company, as a condition of its license, might be required to limit its return on prudent investment need not be considered.

Certainly the Government has power of making a contract with a private company for development of water power and to provide for recapture at the actual cost of construction rather than at the fair value of the property at the time it is taken over. This is what the Federal Water Power Act does. Solicitor Russell merely answers the question, what constitutes the cost of construction within the proper meaning of this law.

It is just as if a man agreed to do a piece of work for another at actual cost. There would be no chance for dispute over the value of the work done because this would not be the basis of payment provided for in the contract; but there might be a disagreement as to what items should be included in actual cost. If the contractor hired all of the work done he undoubtedly could charge as part of the cost what he paid out for this labor. But could he also charge a profit to himself on the job as part of its cost? If he did part of the work himself could he charge for his own time as part of the cost?

Such questions might be raised. As stated, what constitutes part of the cost of construction within the meaning of the Federal Water Power Act is all that Solicitor Russell attempted to answer.

Shaves and Sodas With Your Telephone Service

Some idea of the trials and tribulations of a Public Service Commission in valuing the plant of small independent rural utilities can be gained from the following statement of Commissioner Harding of the North Dakota Board, in a proceeding by a telephone company, in a community of one hundred twenty-five persons, for increased rates:

"Investigation of Exhibit No. 1 discloses the rather unhealthy condition of this company, especially in 'Accounts Payable.' It also discloses some peculiar plant and equipment items that can hardly be classed as plant and equipment by any stretch of the imagination, namely soda fountain and barber shop equipment." *

* *Re* Amenia Teleph. Co. Case No. 3043, June 29, 1929.

What Others Think

Why the Interstate Commerce Commission Ignored "Reproduction Cost"

THE Supreme Court decision in the O'Fallon Case continues to attract the attention of writers on public service regulatory problems. A very careful analysis of both the prevailing and dissenting opinions in that case has been made by William M. Wherry, a prominent lawyer of New York city and a contributor to this magazine. Mr. Wherry's views are set forth in an article in the September issue of the *New York University Law Review*, Volume VII, No. 1.

He points out that the majority of the justices of the Supreme Court held in substance that the Interstate Commerce Commission had given no consideration whatever to reproduction cost as required by Congress, in arriving at the value of a considerable portion of the railroad company's property; and that the dissenting justices were of the opinion that the Commission had evidently given some consideration to the reproduction factor. Mr. Wherry shows that the decision did not turn on the question of how much consideration should be given to the reproduction factor but on whether any consideration whatsoever had been given to it.

It is interesting to note in this connection that it used to be the practice of some of the Commissions—believing that the return should be based on the prudent investment rather than value—to state that in making their decisions in valuation cases, they had taken reproduction cost and all other factors required by the Supreme Court into consideration. As a matter of fact the record might show that they had given very little consideration to it. This practice Mr. Wherry calls an attempt to "immunize" the decision; that is to say, to fortify it against reversal for not having taken reproduction cost into consideration. A mere statement, however, that the Commission has taken reproduction cost into consideration in the face of a record showing plainly that it has not done so is not sufficient to prevent reversal of the decision.

THE average reader looking over the Interstate Commerce Commission decision in the O'Fallon Case will be forced to the conclusion that the majority of the Commissioners purposely refused to consider reproduction cost, in order to raise the question whether prudent investment might not be taken as the basis for calculating the return in recapture cases. If such were the intention, it was not upheld by the Court.

Of the effect of the O'Fallon decision Mr. Wherry says:

> "Railroad stocks and bonds outstanding in the hands of the public, amounting to approximately 19 billion dollars, are enhanced in their security, because of this decision. The Interstate Commerce Commission valuations tentatively put on the property, securing these issues, a total value of about 24 billion dollars, but, in each instance, the Commission ignored the increase in the level of values, just as it did in the O'Fallon Case. If properly applied, these valuations would undoubtedly be greatly increased.
>
> "As to the effect on railroad rates, the actual practice in fixing these rates is to deal with individual rates. Competitive factors also enter into consideration. Because of this the railroads have little chance of increasing their rates to what would be theoretically possible, as was

done by other public utilities after the Bluefield, Southwestern Bell, and the Indianapolis Water Company cases.

"On the other hand, although an immediate increase in the rates of the railroads may be doubtful, at least the decision should make a reduction of rates increasingly difficult.

"The danger of recapture of any earnings, since the O'Fallon decision, is very remote. This in itself must have a stabilizing effect on railroad revenues.

"The importance of this decision is that a new stability is added to the railroads. This should strengthen their credit and greatly aid the reconstruction of transportation facilities, which has been rapidly progressing in this country since the War."

—D. L.

State *versus* Federal Regulation of Electric Power Crossing State Boundaries

THE amount of electricity transmitted across state lines is not as insignificant as many persons think, according to F. B. Crawford, professor of political science in the School of Citizenship and Public Affairs of Syracuse University.

In Professor Crawford's opinion, a general average for all of the states does not give a true picture of the situation, as considerable amounts of electricity are transmitted across state lines in certain sections of the country. Interstate transmission is continuing to increase at a rapid rate and this makes the question of its proper regulation of some importance.

Professor Crawford, in an article on "The Control of Interstate Transmission of Electricity," in the August, 1929, issue of *The Journal of Land & Public Utility Economics*, points out several possibilities for the regulation of the wholesaling of electricity. One is the "compact" method; that is to say, regulation by agreement between the states interested in the particular regulatory problems. This, Professor Crawford believes, may well be disregarded as a possible solution of regulation.

Another method is that of state regulation by permission of Congress. Proposals for carrying out this suggestion he regards as half hearted endeavors to solve a clear-cut issue.

A third solution is that the Federal Power Commission should be given control over electric rates, service, financial methods, and other matters, whenever electricity is transported in interstate commerce. This Professor Crawford believes to be the best solution of the problem of control of interstate transmission of electricity. He says:

"Two questions can be raised in regard to national control and the Federal Power Commission. What will be the power of the states? Will the State Commissions become as impotent in regard to electric light and power companies as they have with the railroads? The two are so unlike that this situation will not occur. The rates for electricity are fixed for industrial and domestic uses and this power will remain in the hands of the State Commissions. The national body will fix only interstate wholesale rates. This will have a direct effect on state rates but only in case they are unreasonably high.

"A holding company which sells power to a distributing company across a state line will then have the rates on that power fixed by national authority on the basis of a reasonable and prudent investment. Since holding companies at present actually enjoy a considerable monopoly in most cases, they are able to charge rates which may include a profit far and above a legitimate return on the investment and operation costs. If competition existed, no danger would be present, but the distributing concern has usually no option other than to buy from the holding company. Frequently it is connected with that holding company and the sale is between partners.

"In the same way the Federal Power Commission might control the financing of the holding companies and thus prevent speculative pyramiding and other abuses which have come from the organization of holding companies.

"National control of wholesale interstate shipments seems, therefore, the only feasible solution to that problem. As interstate shipments grow in importance, an

inevitable development, and as centralized holding companies extend their control according to present tendencies, the urgency of some such treatment of the problem will become increasingly apparent. The most practical solution seems, therefore, to involve empowering the Federal Power Commission to set rates for power transmitted across a state line and to supervise the methods of financing and control of holding companies engaged in interstate transactions."

—H. C. S.

Are a Power Company's Profits "Monopoly Profits?"

THE view of Professor Philip Cabot of Harvard University, recently expressed in an article in the *Atlantic Monthly* and the *Harvard Business Review*, that the present regulatory system is erroneously predicated on the theory that profits in the electric light and power business are monopoly profits is unsound, in the opinion of Horace M. Gray, Assistant Professor of Economics, University of Illinois. Professor Gray's position is set forth in the article on "Competition as a Basis for Electric Light and Power Rates," in the August, 1929, issue of the *Journal of Land & Public Utility Economics*.

Professor Gray says that to Professor Cabot competition means two things: First, the existence, either actual or potential, of "power produced by the potential customers for their own use;" second, the existence of "an almost infinite variety of substitutes."

Assuming that customers could, if they had to, produce electrical power for their own use, Professor Gray says:

> "The unit cost of electricity, however, under such a system of production might be very great—probably much in excess of unit costs of electricity produced under modern large-scale, central-station methods.
>
> "Under ordinary conditions, then, the cost differential between large-scale and small-scale production is so great that the consumer whose only alternative to purchasing energy from a public utility company is to supply his own needs by small-scale methods is definitely restricted in bargaining power."

PROFESSOR Gray then declares that it is mere sophistry to maintain that a competitive situation exists here, or that the price of electricity is set by competition. He says:

> "It would be just as logical, although perhaps more extreme, to maintain that freight rates from Chicago to St. Louis are determined by the potentiality of disgruntled individual shippers building their own railroads between these two points in order to supply their own transportation needs. Competition can be effective only when the cost differential, considering every element of individual and joint costs, between two alternative methods of production is either very small or so factually undetermined that the way is open for for reasonable business judgment. In the electric light and power industry this condition exists ordinarily only in the case of large or favorably situated industrial and municipal enterprises, and in such special instances as where electricity is a by-product or gives rise to a by-product in some other industrial process."

PROFESSOR Gray concludes that the second of Professor Cabot's *criteria* of competition, namely, the existence of an "almost infinite variety of substitutes," is likewise inapplicable generally to the electric light and power industry. He says:

> "Where the superiority of electricity over substitute forms of energy is very great, the consumer has no effective bargaining power; he will pay a high price for electricity rather than suffer the relative disadvantage of being forced to utilize an inferior substitute. Only in cases where the relative superiority of electricity is very small or perhaps questionable does effective competition exist. Although many instances can be cited where the relative superiority of electricity over other forms of power is unproven, and other instances can be cited where electricity in its present stage of development is distinctly inferior to other forms of power, the fact remains that for many purposes

electricity enjoys a very considerable differential advantage over any possible substitute. As time passes this differential advantage tends to become larger and more certain. Competition, consequently, becomes less and less effective until for all practical purposes it may be said to have disappeared."

In conclusion, Professor Gray points out what he deems to be a fundamental weakness of Professor Cabot's argument. Professor Gray says:

"The fault in his method lies in the assumption that a set of conditions which exists in certain special instances is generally applicable to the whole field of electricity consumption. In the opinion of the writer, such an assumption is unwarranted both on theoretical and factual grounds. Moreover, the theory that the price of electricity can and should be determined by the competitive method of price comparison is not only unsound but impossible of general application for the very simple reason that, for many classes of consumers, competition is not effective and, hence, no competitive standard of comparison obtains. To enforce a price comparison between electricity produced under modern large-scale methods and electricity produced under more costly alternative methods, or between electricity and some inferior substitute form of power, is socially unthinkable. Such a policy, under a regime of local monopoly, would forever bar certain classes of consumers from participating fully in the benefits of economic and technical evolution."

Professor Gray, differing from Professor Cabot, sees increasing monopoly in the electric light and power industry. With all the faults of the present regulatory system the present policy of service at cost is declared correct. Professor Gray says:

"Many students of public utility affairs will doubtless sympathize with Professor Cabot's indictment of the present regulatory system. They cannot, however, accept as valid his explanation of the causes of this situation or his remedial proposal. If the experience of the last thirty years has shown anything, it has shown an unmistakable tendency toward increasing monopoly in the electric light and power industry. Monopoly has flourished both from natural causes and by reason of government policy designed to secure the advantages of centralized production. To assume now, after many years of conscious fostering of monopoly, that it does not really exist but that we actually have a state of competition is preposterous. Whatever may be the faults of the present regulatory system (and admittedly serious weaknesses are evident), clearly public policy is fundamentally correct in maintaining that a necessity of life produced by monopolistic organizations created and sponsored by the Government must supply service at cost. A state that takes any other position in effect extends to a privileged few the power to levy toll on all others. As for the managers and owners of public utility enterprises, they must either accommodate their actions and policies to this broad principle of public policy or else be prepared to experience the coercive power which organized society for its own protection brings to bear against those who for their own gain transgress its fundamental rules of conduct."

The Rights of the Small Investor in Public Utility Corporations

The purchase of securities of business corporations is so widespread that knowledge of the factors which make bonds or stock a good or doubtful investment is becoming more and more important to the public. That securities must be based upon sufficient assets is probably known to everybody who has a dollar for investment. But what is often overlooked is the quality of management which may make or break any business concern irrespective of its other assets, tangible or otherwise.

In a book entitled "Industrials—Their Securities and Organization," by Sterling H. Bunnell, a member of the American Society of Mechanical Engineers, of the Society of Industrial Engineers, and of the Franklin Institute, the author sets forth in an understanding way the qualities and practices of management essential to give all the assets of an industrial corporation the full values appropriate to a growing

concern. While the problems of private business differ from those of public utilities, there is much in this book that will be of interest to utility men as well as investors in utility securities. It is apparent that the general trend towards enlargement of business is not confined to the utility business but is in response to an economic law. The author covers a broad range of subjects connected with the management and operation of private business, much of which is elementary to those having charge of such concerns but much of which will be new to those seeking investment and all of which is important.

UTILITIES have sometimes been criticised for selling preferred rather than common stock to the public on the ground that the owners of preferred stock have no voting power. The point made is that the management gets the money of the public without losing control of the business. This question as it applies to private business is discussed by the author, who says:

> "Manifestly, the power of the holder of a few shares of stock in a corporation, limited to the effect of one vote per share, cast in the election of the board of directors, gives him no appreciable force to affect the control of corporation affairs. Small stockholders, if dissatisfied with present conditions or future prospects, have practically no other course than to sell their stock for what it will bring, and reinvest their capital in other securities. However, the average investor does not buy stocks with the idea of assuming any responsibility for management, even to the slight extent of contributing the votes of his shares to the majority by signing a proxy form sent him with a stamped return envelope. The active control of corporations and the determination of policies generally rests undisturbed in the hands of the men already identified with the management, and the directors continue to be elected by those of the stockholders who have the greatest influence by reason of their wealth, amount of shares held, or activity of their interest, and the others who follow their lead. Thus the desirable continuity of plan and purpose is generally maintained from the very beginning of the operation of an industrial unit.
>
> "Corporation directors and officers generally feel a high degree of responsibility to the stockholders for the success of the operation. The ethics of business management have developed and advanced a long way from the methods which were tolerated in the early days of industrial incorporation."

It may be all right to give the ignorant as much voting power as the intelligent in political matters but this would be a very bad business policy. Ordinarily the small investor in any business prefers to trust the judgment of the men who understand that business rather than to have a voice in running the business. If he cannot trust the management, he usually stays out.

—W. C. B.

INDUSTRIALS—THEIR SECURITIES AND ORGANIZATION. By Sterling H. Bunnell. Chicago: A. W. Shaw Company. 334 pages. 1929.

How the Electric Company Benefits From the Holding Company

FEW factors have played a greater rôle in bringing about the prosperity of the electric light and power industry and the reduction of rates, in the opinion of Kenneth Field, Assistant Professor of Business Economics, University of Colorado, than the efficiency of group management organizations. And few matters in corporation finance are so intricate as the stock control relations which incorporated service organization bear to the companies which they serve.

In an article entitled "A Study of the Intercorporate Structure of Service Corporations in the Electric Light and Power Industry," in the August, 1929, issue of the *Journal of Land & Public Utility Economics*, Professor Field discusses the functions of operating management organizations, constitutional organizations, and financial service or-

ganizations and the causes of their incorporation and explains the significance of stock control relationship.

Of great popular interest at the present time is the author's discussion of stock control relationship. These he divides into four classes: (1) Stock control relationships existing between service corporations and the holding corporation systems which they may serve; (2) service corporations which hold a controlling majority of the stock of the holding corporations whose subsidiaries they serve; (3) service corporations which hold minority interests in the holding corporations whose systems they serve; (4) relationships arising when a service corporation and the system control company whose subsidiaries it serves are under a common control or domination.

He declares that these classes of stock control relationships reflect the connection which the system holding corporation bears to that corporation in which the individuals who dominate the system are primarily interested.

Commenting upon the significance of these relationships, Professor Fields says:

"While these holding corporation relationships have been explained in terms of the financial interests of the individuals who dominate the holding company system, some of those financial interests require further explanation. In that group of cases in which the dominating individuals are principally interested in the system control company, those individuals depend, for their rewards, upon the dividends paid by the system control company. Hence, it is to their advantage to see that no earnings of the system are diverted as fees to an outside service organization. In this class of cases, therefore, service organizations are controlled by the system holding corporation.

"In that group of cases in which the dominating individuals are principally interested in the service corporation or corporations, those individuals depend for their rewards upon the dividends paid by the service corporation or corporations. The service corporation, in turn, depends for its income chiefly upon the fees for its services and on the dividends received from its stock holdings in the system control company. Since, as has been stated previously, the stock holdings of the service corporation are usually a fraction of the total stock of the system control company, it is to the advantage of the service corporation to divert earnings of the system control company to the service corporation.

"There are two principal ways of diverting earnings from public utility systems to service corporations: One is to pay those earnings out gradually as fees in connection with services rendered by the service corporation; the other is to capitalize those earnings in the financial structure of the system and to deliver to the service corporation cash and/or securities which represent the capital value of those earnings."

In conclusion, Professor Fields sketches the picture as follows:

"It may be said that group service organizations have been developed to provide small corporations with a calibre of managerial talent that would not otherwise be available. In this respect they have made substantial economies possible. Group service organizations are separately incorporated partly to avoid the obstacles which beset a system holding corporation doing business in several states, partly to separate distinct types of businesses, i. e., the business of holding securities and the business of constructing or managing properties, and partly to provide legal channels for compensating the motivating geniuses of these systems more nearly in accordance with the contributions which they have made. The stock control relationships reflect the relation of these dominating individuals to the holding company systems."

Publications Received

America's New Frontier. Middle West Utilities Company. Chicago. 79 pages. 1929.

Capital Stock without Par Value. By John R. Wildman. New York. A. S. Shaw Company. 553 pages. 1928.

Industrials: Their Securities and Organization. By Sterling H. Bunnell. Chicago. A. S. Shaw Company. 333 pages. 1929.

Rate-Making for Common Carriers. By J. Haden Alldredge. Atlanta, Ga., The Harrison Company. 201 pages. 1929. $5.00.

WHAT READERS ASK

Out of the mail bag of the Editor have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

Has the propriety of advertising by public utility companies ever been considered by a State Public Service Commission?

ANSWER

Yes; the question has arisen in several cases. The Kansas Commission, for example, has held that a charge made by a utility company for advertising in connection with an application for an increase of rates should not be charged as an operating expense against ratepayers. Re Missouri & K. Teleph. Co. (Kan.) P.U.R.1918C, 55. On the other hand, the Connecticut Commission has upheld such a change. Certain public statements had been made condemning the use of a service charge. In answering these criticisms the company published a series of advertisements in newspapers explaining the reasons for the inclusion of such a charge in its rate structure, its effect on the company's revenue, and the bearing on the patrons of the company. There was no claim that the advertising contained any untrue or unfair statements. The Commission said that its experience and observation had been that frequently complaints by patrons in matters relating to utilities were due to the omission of the utility to provide intelligent information. The Commission said it had always advocated a proper amount of publicity on the part of utility companies, that their patrons might be informed in a general way as to operating and financial conditions affecting the ratepayers; that a frank and fair statement by a utility on controversial questions would assist in maintaining a relationship of good will and co-operation between the company and its patrons. The Commission declared that while there is a financial limit to which a utility should not go in the matter of publicity, the Commission did not find in the case before it any facts which would warrant its intervention. Stamford v. Stamford Gas & E. Co. P.U.R.1924E, 609.

No question seems to have been raised thus far as to the power of Commissions to regulate advertising expenditures for public utility companies, but the extent to which Commissions may limit such expenditures is not settled.

QUESTION

We are interested in the questions:

(1) Will a new franchise be refused to a competitive public utility company by a municipality on the ground that the proper protection lies in supervision by the regulatory authority? What is the rule?

(2) Will a franchise to a competitive company be granted where existing public utility company is operative under an indeterminate permit or franchise?

Also will you refer us (3) to some of the leading decisions of the Supreme Court in respect to the determination of the proper rate base of public utilities?

ANSWER

We will first refer you to authorities bearing on the first two questions asked.

In Calumet Service Company *v.* Chilton, 148 Wis. 334, and in State *v.* Kenosha Elec-

tric Company, 145 Wis. 337, it is indicated that indeterminate permits usually confer an exclusive right, but that is under the Wisconsin statutes. Inadequacy of service may be a ground for admitting competition. *Re* Gilman Western Teleph. Co. (Wis.) P.U.R. 1924B, 4. In several cases it has been held that franchises are not necessarily exclusive. Public Service Commission *v.* Blue Flame Gas Co. (Mont.) P.U.R.1926D, 314; *Re* St. Lawrence Transmission Co. (N. Y.) P.U.R. 1921A, 577. See also Muscoda Bridge Co. *v.* Muscoda (Wis. Sup. Ct.) P.U.R.1928A, 146, and the cases cited in El Dorado *v.* Coats (Ark. Sup. Ct.) P.U.R.1928B, 351.

In the absence of a statute giving a State Commission power to issue certificates of public convenience and necessity the question whether a municipality should open its streets to a competitive utility is one of policy to be determined by the municipality unless the municipality is bound by the previous grant of an exclusive franchise. In states in which Public Service Commissions have the authority to grant certificates of public convenience or necessity, the decision whether a competitive company should be allowed to come in is for the State Commission and not the municipality. If a municipality should grant a franchise to a competing company it would not be effective unless the Commission also granted a certificate of public convenience and necessity.

In answer to your third question we refer you to the following cases: McCardle *v.* Indianapolis Water Co. (U. S. Sup. Ct.) P.U.R.1927A, 15; Missouri ex rel. Southwestern Bell Teleph. Co. *v.* Public Service Commission (U. S. Sup. Ct.) P.U.R.1923C, 193; Bluefield Water Works & Improv. Co. *v.* Public Service Commission (U. S. Sup. Ct.) P.U.R.1923D, 11; Public Utility Comrs. *v.* New York Teleph. Co. (U. S. Sup. Ct.) P.U.R.1926C, 740; Georgia R. & Power Co. *v.* Railroad Commission (U. S. Sup. Ct.) P.U.R.1923D, 1.

QUESTION

Have you ever run across any decisions relating to the validity of contract between local and long distance telephone companies wherein the pro ratio distribution of income from long distance calls is insufficient, so far as the local company is concerned, to make any profit? In other words, if a local and long distance telephone company enter into a contract and the division of tolls is so small to the local company that it is doing this work at a loss, has there been any decision to your knowledge setting aside that portion of the contract?

ANSWER

The power of Commissions to establish reasonable rates notwithstanding contracts by public utilities is too well settled to be considered at any length. The cases are very voluminous on the point and the matter has been passed upon by the Supreme Court of the United States. In Louisville & N. R. Co. *v.* Garrett, 231 U. S. 298. See also Lighthall *v.* Illinois Bell Teleph. Co. (Ill.) P.U.R. 1923A, 11.

Whether, however, the Commission will set aside the contract in the situation you describe is quite another matter. Two decisions in point would seem to indicate that it will not. In the Pacific Teleph. & Teleg. Co. *v.* Whitcomb (U. S. Dist. Ct.) P.U.R. 1926D, 815, the Washington Commission said: "It is conceded that the amount received by the Home Company is substantially less than the actual cost of supplying the service. It is, therefore, contended that the arrangement is unconscionable. It is not apparent to us, however, how relief against that situation may be granted in this case. It appears, nevertheless, that contracts of the same kind—and in fact contracts less favorable to the small companies—are readily entered into all over the country by telephone companies, including independent as well as subsidiary companies. That such a division of the joint tolls, in spite of superficial appearances to the contrary, is not unwise or unconscionable would seem to be sustained by the fact that it embodies the customary and usual method of adjustment adopted by the parties, dealing in the light of practical experience in such matters." The Commission was sustained by the Court.

The same situation went before the United States Supreme Court in Houston *v.* Southwestern Bell Teleph. Co. 259 U. S. 318, 322, P.U.R.1922D, 793. In this case, the highest court also refused to set aside a contract which was admittedly unprofitable to the local company under the same circumstances.

Of course, if the inequality is manifestly unfair and will result in the exhaustion of the utility assets to the detriment of the public, the Commission might properly take a hand. What is and what is not fair and unfair in toll rate apportionment between two companies is discussed at length in *Re* Southern California Teleph Co. P.U.R.1925C, 627, 654.

The March of Events

New Utility Holding Company Organized

A NEW company to acquire holdings in public utilities has been organized. It is called the United States Electric Power Corporation, and behind it, according to the New York *Times*, are the United Founders Corporation, American Founders Corporation, Hydro-Electric Securities Corporation, Albert Emanuel Company, Incorporated, Harris Forbes Corporation, A. C. Allyn & Company, W. C. Langley & Company, Seaboard National Corporation, and others.

No public financing is contemplated, it is reported. The company is to have $65,000,000 initial assets. The authorized capitalization is 1,000,000 shares of preferred, 2,000,000 of Class A, and 20,000,000 shares of common stock, all of no par value. No preferred stock is to be issued at present.

Commercial and Municipal Electric Plants

THE Department of Commerce has announced that, according to returns received at the quinquennial census of electrical industries taken in 1928, the output of current by commercial electric light and power plants increased from 38,413,240,163 kilowatt hours, or 95.3 per cent of the total output, in 1922, to 71,306,839,538 kilowatt hours, or 95.5 of the total, in 1927. The Department reports that the output of municipal plants increased during the same period from 1,878,296,272 kilowatt hours, or 4.7 per cent of the total, to 3,379,538,472 kilowatt hours, or 4.5 per cent of the total.

There was a decrease in this period in the number of both commercial and municipal plants, counting each separate generating station as a separate plant, but the rate of decrease for municipal plants was greater than that for commercial plants, with the result that the proportion which the number of municipal plants formed of the total decreased from 33.6 per cent in 1922 to 25.2 per cent in 1927.

The number of customers served by municipal plants shows a considerable increase from 1,644,744 in 1922, to 2,128,868 in 1927, but the proportion which the number of customers of municipal plants formed of the total showed a decrease from 12.9 per cent in the earlier year to 9.8 per cent in the later year.

Alabama

Gas Pipe Line into State without Permit Opposed

GOVERNOR Graves on September 9th declined to approve a plan of the Southern Natural Gas Company to pipe its gas into Alabama from its Louisiana fields, for distribution through a subsidiary corporation, until the state's utilities laws were properly complied with and a certificate of convenience and necessity secured from the Public Service Commission.

The governor announced this decision following a conference with attorneys for the company, representatives of the state's steel and mining interests, and Hugh White, President of the Public Service Commission. The governor had been informed that the company had completed laying approximately 100 miles of pipe in west Alabama.

The plan of the company, as reported in the newspapers, is to supply gas to the principal cities of the state through the medium of a subsidiary which would comply with the state's utilities law. The parent company itself would not file actual application for permission to operate as an intrastate organization itself. The governor objects to this mode of procedure.

California

Rates Slashed by Commission

A REPORT made public by the Railroad Commission shows that pruning of utility rates during the fiscal year ending June 30th has resulted in reductions totaling $2,385,499. Increases in rates granted have totaled $156,263.

The cost of running the Commission was reported as $765,000—less than half the net saving enjoyed by consumers as a result of the Commission's orders. Of course there were other benefits to utility patrons as a result of other orders and investigations.

Consolidations, mergers, and the transition of numerous trucking lines from public utilities to private carriers, it is stated, have been steadily cutting down the number of corporations under Commission jurisdiction.

In connection with the reduction of rates under the direction of the Commission and a new rate investigation proposed, Senator Herbert C. Jones is quoted in the San Francisco *Chronicle* as stating:

"When the Railroad Commission was organized under the late J. M. Eshleman, it was as watchful to prevent confiscation of property of the ratepayers as of the corporations. In this present hearing initiated by the Commission, we feel that the same protection will be accorded the public as in the splendid administration of Eshleman."

Franchise Fare in Los Angeles Supported in Briefs

BRIEFS recently sent to the United States Supreme Court by attorneys for the Railroad Commission and the city of Los Angeles contain arguments in support of a 5-cent fare for the Los Angeles Railway, which is operating under 102 franchises granted by the city of Los Angeles. The case will be heard by the Supreme Court on October 21st, when a decision of the Federal District Court allowing the company to increase its fare to 7 cents will be reviewed.

The company in 1926 sought authority from the Railroad Commission to increase its fare from 5 to 7 cents, with four single tokens for 25 cents. This application was denied, and in June 1928, the company filed suit in the District Court of the United States alleging that the 5-cent fare was confiscatory and that the order of the Commission denying the increase demanded by the company was void.

An injunction was granted restraining the Commission and the city from enforcing the Commission's order, declaring the franchise rate to be confiscatory. As a condition, the company was given the right to increase its fares to a 7-cent basis, or four tokens for 25 cents, pending final determination by the Supreme Court. The company has been giving car riders coupon slips which would entitle them to a refund if the 5-cent fare is upheld by the Supreme Court.

The Commission and the city of Los Angeles contend that the fare fixed by franchise is binding upon the company regardless of any question of confiscation. It is conceded that the Commission has the power to change the franchise rate, but it is urged that until it does so, the company can obtain no relief from the courts.

District of Columbia

Ruling on Joint Use of Tracks

IN an opinion given to the Commission by W. W. Bride, general counsel, on September 17th, it was held that the Commission has authority under the law to compel unified operation of the Capital Traction Company and the Washington Railway & Electric Company for the purpose of effecting economies, even if plans for a merger fail.

The unification and merger questions have been prominent in the hearings on the application for authority to charge higher fares. The position of the Commission has been that economies effected through joint operation would make it unnecessary for the Capital Traction Company to seek a higher fare, says the Washington *Star*.

After quoting from the law and outlining the problem confronting the Commission, the opinion of Mr. Bride concludes with the following statement:

"The mandate of Congress is that the act shall be interpreted and construed liberally in order to accomplish the purposes thereof. It cannot be denied that one of the purposes of the act was to furnish the best service obtainable to the public and yet maintain for the public utilities a fair return according to law.

"If the joint use of facilities of two traction utilities would afford a greater benefit to the public and still maintain for the companies a reasonable return, then certainly the power of the Commission to order such joint use of facilities cannot be doubled."

Probe of Gas Utility Sale

AN investigation was started several months ago in respect to a sale of the Washington Gas Light Company and its subsidiaries to a group of New York financiers, the legality of which had been questioned. It was reported that D. A. Pearson of New York had acquired approximately 110,000 of the 113,000 outstanding shares of the gas company's stock for a group of New York investors. The fact was revealed that the new owners had organized the Seaboard Investment Trust for the purpose of holding the stock.

The Department of Justice has been making an investigation to determine whether the transaction was in conflict with the La Follette Anti-merger Law, which forbids a foreign corporation to own a controlling interest in a Washington utility. A preliminary report was submitted to the Commission by the Department of Justice on September 20th. Corporation Counsel William W. Bride then continued the inquiry. The Washington *Star* of September 23rd says in regard to the report:

"Although the report is being guarded with utmost secrecy, it was said at the District Building that it contains much information of value but that certain details will have to be developed further before the Commission can reach a final decision as to the legality of the sale.

"The absence from the United States of one of the principal witnesses, which Bride and the Department of Justice wanted to interview, has delayed the completion of the investigation. As this witness is not expected to return until after October 1st, Bride said he probably will not complete his renewed inquiry for two weeks."

Indiana

Receiver Asked in Gas Company Suit

A REQUEST for the appointment of a receiver for the Citizens Gas Company and for an injunction to prevent the expenditure of approximately $1,000,000 by the gas company for improvements, says the Indianapolis *News*, was contained in a petition presented on September 19th to the Federal Court. The report in the *News* continues:

"The petition further asks that the franchise of 1905, by which the city is to take over the property twenty-five years later, be 'decreed in effect, that said public charitable trust be defined and enforced and that all persons holding claims present them to the receiver.'

"After the final hearing in the case, the petition asks that the franchise be sustained and a perpetual injunction issued which will prevent any kind of legal action disputing the rights of the city to ownership of the property."

This litigation grew out of the controversy over the question whether the city could acquire the Citizens Gas Company under the terms of the charter and the franchise under which the company has been operating. These instruments provided for operation under a board of trustees acting in behalf of the public. Provision was made for acquisition of the property by the city, and legislation has been passed in order to make such acquisition effective.

Kansas

City Considers Gas Rate Reduction Insufficient

A RECENT reduction in gas rates for Emporia is considered insufficient by the Emporia city commission. The Public Utilities Commission has been notified by the city attorney that a protest would be made. The rates are alleged to be out of line with those prevailing in other Kansas cities.

The new rates recently announced by the Kansas Electric Power Company provide for a charge of $1 per thousand for the first 3,000 cubic feet; 90 cents per thousand for the next 2,000 cubic feet; 75 cents per thousand for the next 5,000 cubic feet; 65 cents per thousand for the next 5,000 cubic feet; and 55 cents per thousand for all over 15,000 feet. There is a minimum monthly charge of $1 and a penalty of 10 per cent for late payment.

The new rate schedule was approved recently by the Public Utilities Commission. It was designed by the utility to permit wider use of gas as fuel for heating homes.

Maine

Consumers' League Interested in Rates and Service

THE Consumers' Protective League, which was organized primarily to defeat the proposal to permit the export of power from the state, is now giving its attention to the question of rates and service, both in the settled centers and in the rural regions.

The referendum campaign, says the Livermore *Advertiser*, was only the preliminary skirmish in the battle, not only to preserve Maine's power for Maine development, but to secure its every broader utilization under conditions and terms alike to all. The league invites enrollment of all interested citizens and also welcomes correspondence regarding rate or service problems in which it may be of help.

Massachusetts

Conferences on Gas Rates Unsuccessful

CONFERENCES between public officials and representatives of the Boston Consolidated Gas Company in regard to a rate schedule including a service charge were, according to the latest advices, unsuccessful. Further hearings before the Commission were to be held.

The suggestion was made at a hearing on September 12th that the company withdraw its already granted petition for a new schedule of rates including a service charge or suspend the authorized new rates which were to go into effect October 1st, but the attorney for the company declined the proposal on the ground that the company felt that the petition was originally completely aired and full opportunity was given anyone who wished to be heard. The Commission declined to suspend the rate schedules. Chairman Henry C. Attwill declared that it would be necessary to reverse the previous decision and he felt that unless new evidence was forthcoming the Commission would not be justified in doing so.

Conferences were entered upon at the suggestion of Samuel Silverman, assistant counsel for the city of Boston, says the Boston *Globe*, with the blessing of Chairman Attwill of the Public Utilities Commission, who adjourned the Commission's hearings to give the city and company men a chance to get together and avoid extra expense.

Rooming Houses Protest Coin Box Change

A HEARING was held by the Commission on September 18th on a protest against the proposed action of the New England Telephone & Telegraph Company of withdrawing the 4-party coin box service. The opponents to this plan were headed by the Boston Rooming House Association.

There was evidence that no matter what amount is found in the boxes the person who has the box installed has to pay 75 cents a month and that commissions are paid to stores and the like but none in rooming houses. It was pointed out by the attorney for the company that when the company found a coin box in a rooming house that was bringing in a considerable amount of revenue each week it made an investigation with a view of establishing a public pay station.

City Councilor John F. Dowd, one of the chief speakers for the remonstrants, according to the Boston *Globe*, said in part:

"The company offers two alternatives, one, a 2-party service at $3.20 per month and the other a $7.50 service per month for 120 calls. The latter would mean 6¼ cents per call. Is that fair, when anyone can make a call from a pay station on the street for 5 cents?"

Michigan

City Ownership of Street Railway Defeated

AT a special election on municipal ownership of street railways in Muskegon, on September 18th, a proposal to purchase the local traction system was defeated by a vote of 2,262 to 415. This followed a recommendation of a committee of the chamber of commerce that municipal acquisition be disapproved by the voters.

The Muskegon Traction & Lighting Company, which, until the advent of the motor

bus, had a practical monopoly of local transportation facilities, had announced that it would cease operations on September 18th because of the accumulating burden of annual deficits, inability to procure additional capital, and a hopeless future because of the unrestricted competition of busses, cut-rate taxis, and privately-owned cars. The committee appointed by the chamber conducted an extensive investigation on the question of municipal ownership and mass transportation. Its conclusions were:

1. Municipal ownership under the ordinance submitted to the electors of Muskegon should be defeated at the polls.

2. The preferable solution of the mass transportation problem in Greater Muskegon is a unified co-ordinated system of street railway and bus service under private ownership properly regulated by the statutory authorities.

3. If unified co-ordinated service cannot be made operative a unified bus service under proper regulation is the desirable alternative.

The city commission is working with the bus operators for a unified bus system.

Minnesota

Reduced Fares Asked for School Children

A MOVEMENT has been under way in Minneapolis and St. Paul to secure a 5-cent fare for school children. Such a fare is in effect in Duluth by reason of a compromise agreement between the city and the street railway company.

Street car company officials in Minneapolis have pointed out that the reduced fare in Duluth is just an experiment, and that substantial concessions were made to the company as a consideration for the fare. It is stated that the Duluth council agreed to revoke present council orders for street railway extensions; not to order any additional extensions for two years; to agree to the removal of certain bus lines that were not paying; and not to appeal to the United States Supreme Court, the State Railroad and Warehouse Commission's fare decisions.

The principle of a school children's fare is unsound economically, in the opinion of T. Julian McGill, vice-president of the Minneapolis Street Railway Company. He has pointed out that there is no accurate basis for applying this fare only to the needy. He is quoted in the Minneapolis *Tribune* as stating:

"The poor boy and girl that must work to keep the family and is not able to go to school secures no benefit, while the school children of the well-to-do are benefited, although their parents seldom use the street cars. This is a haphazard plan of giving to a great many in order to help a very few.

"The location of grade and junior high schools is such in this city that there is no demand for a great majority of the children to use the cars, except when the weather is bad. Obviously, it would be cheaper for the children to walk and pay full fare only on bad weather days than to buy books of tickets that require a ride at least once a day or the loss of the unused coupons.

"Boys and girls that are going to junior or senior high schools have reached the age where walking should be obligatory. In fact, in many such schools, gymnasium credit is given for walking."

An obstacle to the 5-cent fare was suggested by R. S. Wiggin, assistant city attorney, who directed attention to the fact that the law provides that the same fare shall be charged each passenger for transportation over all street railway lines in any city. His interpretation was that this meant that no class of passengers could be singled out for a certain fare, and that whatever fare was charged must be uniform for all passengers.

City Attorney Neil M. Cronin asked the attorney general for a ruling on this point.

Missouri

City Attacks Street Railway Valuation in St. Louis

THE city of St. Louis has filed its brief in the supreme court at Jefferson City supporting its appeal from the decision of the Cole county circuit court affirming the valuation and 8-cent fare order of the State Commission. Eleven assignments of error are charged against the lower court.

The contention is made that it was an error not to deduct from the original cost valuation as found by the Commission the sum of $8,469,730 representing the credit balance in the depreciation reserve fund. Other claims are made in regard to the valuation of land, going value, promotion and consoli-

dation expenses, and the depreciation ratio.

The company has been seeking a permanent 10-cent fare, with four tokens for 35 cents. Pending the outcome of this litigation there is, by agreement, an experimental fare schedule of 10 cents cash or a 12-ride weekly ticket for 90 cents. A report made by the company to the city on September 13th showed that the income during the first week of the fare test, August 26th to September 1st, was greater by 2.4 per cent than during the previous week under the old 8-cent fare, but there is reported to be a decrease of 4.82 per cent in the number of passengers carried. In the next week there was an increase in passengers.

The number of 10-cent fares the first week were slightly more than the number of commutation ticket riders, indicating that many regular passengers had failed to take advantage of the 12-ride offer. Officials of the street car company had estimated that regular riders outnumbered occasional ones by 2 to 1.

Under the new plan the comparative figures for the various types of fare the first week were as follows:

Types of Fare.	No.	Pct.
Tickets	1,538,845	40
Ten-cent	1,636,450	43
Five-cent	412,002	11
Passes	94,865	2
Children	127,740	3

New Hampshire

Large Electrical Transmission System Proposed

THE Grafton Power Company on September 16th filed a petition asking the Commission to approve a plan for building a new dam in the Connecticut river at McIndoos Falls and a transmission line through the territory of sixteen New Hampshire public utilities in twenty-nine towns and cities.

The new dam, according to the Concord *Monitor*, is proposed to be constructed both for the additional development of power and to equalize the flow of the river. The company is already building the gigantic dam at Fifteen Mile Falls, and it is from this development that it asks authority to construct its transmission line through the state.

The company has been granted authority by the Commission to export power from the state under certain conditions.

New Jersey

Hackensack Water Rate Hearings Resumed

HEARINGS were resumed on September 19th on the application of the Hackensack Water Company for authority to increase rates. George A. Johnson, engineer, said that any increase should be borne by customers in the Hudson river bridge section of Bergen county. Mr. Johnson declared that such customers would not only benefit by whatever improvements the company might make but that they would profit by the ever increasing property valuation in the bridge section of Bergen county as a result of the span.

The company, by reason of the necessity of increasing its facilities to meet the growing demand in that section of Bergen county brought about by the joining of New York and New Jersey through erection of the bridge, has found it necessary to increase its rates. A 20 per cent rate increase is asked. Municipalities of Hudson county are fighting the application on the ground that they are paying sufficient rates and that any improvements made by the company will not benefit Hudson county, but will benefit the bridge section of Bergen county. The company, however, contends that all persons served will be benefited by the improvements and additions made to the plant.

Transit Problems Discussed by Public Service Head

THOMAS N. McCarter, who for twenty-six years has been at the head of the Public Service Corporation, recently, in an interview published in the Newark *News*, discussed the problem of bettering transportation service and obtaining an adequate return. Two of the methods which it is reported the Public Service is considering to solve the problem were set forth by Mr. McCarter. The *News* says in this regard:

"It is evident he sets forth alternatives with the idea of ascertaining which of the two would be the most feasible and attractive to the public. The first would provide tickets for regular riders on trolleys and busses at a lower rate than casual riders paying in cash. Patrons of the bus and trolley system ought to earnestly consider their cooperating with the company on this basis.

"The second plan is to assume, for rate-making purposes, that the gas, electric, and transportation properties, owned and controlled by Public Service Corporation, are merely departments of one company, the corporation, not separate entities. Under this plan, shortages in earnings of one company could be made up by excessive earnings of another.

"At first glance, this alternative might appear more attractive. Analyzed, it means a departure from the present regulatory principle that each operating public utility should stand upon its own feet and justify its own rates. It would make the testing of the fairness of the companies' and corporation's earnings difficult if not impossible under existing law.

"Public Service Corporation is a holding company, not an operating utility. The Public Utilities Commission has no control or jurisdiction over its operations. Until such holding companies come under the state's power of regulation, it would appear dangerous to discard the present method of making each utility justify its rates. To abandon the present method, with the absence of control over the holding corporation, would be, in effect, abandoning regulation. The legislature has the power to place the holding company under regulation, and if that power should be exercised, the proposed plan might work."

New York

Utica Rate Case Settlement

An agreement has been reached by which further proceedings before the Commission in regard to residential and commercial rates for electricity in Utica are expected to end so far as the city is concerned. A reduction was offered by the company which was accepted by the city, and the company has filed the reduced rate schedule with the Commission.

According to a statement by John S. Avery, vice-president and general manager of the Niagara Hudson Power Corporation, the new schedules will produce an annual saving to consumers of nearly $247,000.

Ohio

Columbus Gas Rate Case in Federal Court

The Federal Court heard the contentions of the Columbus and the Federal Gas & Fuel Companies and the city of Columbus on September 10th in regard to the effectiveness of the 65-60-55-cent gas rate ordinance passed in June and later repealed.

Company representatives contend that this ordinance when accepted by the companies became a valid contract. City representatives deny this and assert that the city charter amendment requiring a popular vote before a public utilities ordinance can become operative is constitutional.

A difference of opinion developed as to the meaning of the word "therefor" appearing in § 5 of Art. 18 of the Ohio Constitution. Section 4 of this article provides in part that a municipality may acquire, construct, own, lease, and operate a public utility the product or service of which is to be supplied to the municipality or its inhabitants and may contract with others for such product or service. Section 5 reads:

"Any municipality proceeding to acquire, construct, own, lease, or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by 10 per centum of the electors of the municipality shall be filed with the executive authority thereof, demanding a referendum on such ordinance, it shall not take effect until submitted to the electors and approved by a majority of those voting thereon."

Now the question is whether the word "therefor" refers to the contract for service mentioned in § 4 or only to the provision for acquiring a plant.

Oregon

Hearings on Portland Rates

A HEARING on electric rates of the Portland Electric Power Company was scheduled for October 15th, and a hearing on the application of that company for an increase in its street railway fare from 8 to 10 cents is to be held on November 12th. The electric rate investigation was started by the Commission on its own motion and then a complaint was filed by the city of Portland attacking the power rate; this was to be joined with the complaint filed by the Commission.

Representatives of the city on September 11th sought an indefinite postponement of the hearing on the street car fare but the Commission refused the request. Postponement was asked for on the grounds that the general rate case of the power company coming before the Commission on October 15th would not give the city time enough to prepare for the street car case. Frank J. Miller, Chairman of the Commission, is reported as saying to City Attorney Frank S. Grant:

"We would like to be accommodating, but notice of the hearing was given months ago and there has been ample opportunity for the designation of experts and the study of facts. You would not go before a court of law on such a plea as this, would you, Mr. Grant? I do not think you would. The city owes it to this body and to the public to be ready for the hearing."

Pennsylvania

Philadelphia Gas Rates

THE city's gas rate will be kept at the present $1 a thousand cubic feet figure next year, says the Philadelphia *Inquirer*, but a reduction may be made before the end of 1930. This paper informs us that this conclusion was reached following the presentation to city council of the annual statement of the Philadelphia Gas Works Company for the year ending August 31st. On this report the Philadelphia Gas Commission will base the retail gas rate for the year 1930.

The basis of 95 cents plus is arrived at according to the formula for fixing the rate established by an agreement between the city and the United Gas Improvement Company. Other factors entering into the calculation, however, including a deficit of $22,355 in operation of the gas plants for the twelve-month period, have led the Gas Commission, it is reported, to decide in continuance of the initial $1 a thousand cubic feet rates for 1930.

Texas

Garden Club Campaigns for Cheaper Water

THE Fort Worth Garden Club has been leading a movement in Fort Worth to secure a reduction in the cost of water so as to encourage a greater use in the beautification of grass, trees, and shrubbery. The present minimum rate is $1 for 2,000 gallon quantity. The club favors a larger quantity for the $1 minimum rather than a reduction in the amount.

Persons returning from vacations, says the Forth Worth *Star-Telegram*, have brought information on water rates from resorts that are famous for the beauty of vegetation. Denver, for example, has been cited as a city which encourages the lavish use of water for sprinkling by making the rates low.

Optional Rate Ordinance Passed in Houston

A NEW optional electric light rate ordinance was passed by the Houston city council on September 25th, to become effective from the first full meter reading after September 1st.

The action of the council was unanimous, after the reading in of two amendments. One provides for a continuance of the profit-sharing provisions under which the Houston Lighting & Power Company splits excess

earnings with the city. The other makes the new rates purely optional with consumers, although some slight restrictions are made where there are several consumers located on one piece of property.

Two represenatives of a committee from the Houston Affiliated Civic Clubs, which had protested against the adoption of the proposed ordinance, arose with belated protests after the council had adopted the new ordinance. One of these declared:

"There is something wrong somewhere whenever a corporation wants to hand you something you haven't asked for."

The other declared that he did not believe a man in the city understood the new rate schedules and he was opposed to them.

In a statement distributed by Mayor Walter E. Monteith it is said in part:

"Under this new schedule it will not make any difference as to how many or what size or number of lamps and appliances a patron might have, nor can the primary basis after once being established ever be changed by virtue of ownership or use of any such lamps and appliances.

"It is stated by the company and is the belief of the city that through the operation of the new schedules a saving will be effected to the users of electricity within the city of Houston of approximately $250,000 per annum."

West Virginia

Rate Increase Proposed to Permit Metallic Service

THE Eglon Mutual Telephone Company, which has been operating at Eglon in Preston county, has applied to the Public Service Commission for authority to increase its rates from $6 a year to $10 a year. The purpose of the increase, it is stated, is to enable the company to establish and maintain a new metallic service.

A hearing on the application was set for October 15th.

West Penn Rate Case Heard

AN informal hearing on the Monongahela West Penn Public Service Company's electric rate schedule was held by the Commission on September 24th. These schedules apply in twenty-two counties in the northern and central parts of the state.

The company filed new tariffs several months ago, which went into effect on August 1st. They provided for uniform rates for both domestic and commercial service. The rates filed were lower than those then in effect.

At the same time the company filed what was known as the "rural extension plan," which provided a uniform rule for the extension of electric light service into farming communities and guaranteeing a minimum earning.

The domestic rate schedule provided for a charge of 8 cents for the first 25 kilowatt hours and 3 cents for all amounts in excess of 50 kilowatt hours. The commercial rates were similar except that blocks of 75 kilowatt hours were substituted for the blocks of 25 kilowatt hours. There were no protestants against the new rates.

Wisconsin

Suburbs to Fight Fare Raise

NINE suburbs of Milwaukee, says the Milwaukee *News*, are preparing elaborate plans for a fight to the finish of any proposal of the street railway company to increase the fares now paid by suburban residents. A special advisory committee has been appointed to investigate the entire traffic situation in Milwaukee and its suburbs. Expenses incurred are to be pro-rated among the suburbs according to the assessed valuation of each suburb.

A public utility engineering expert has been hired to conduct the investigation. As soon as a report is made the committee will proceed with plans for the hearing to be conducted by the Railroad Commission.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

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PUBLIC UTILITIES REPORTS

NEW YORK DEPARTMENT OF PUBLIC SERVICE.
STATE DIVISION, PUBLIC SERVICE COMMISSION

RE IROQUOIS GAS CORPORATION.

[Case No. 5732.]

Monopoly and competition — Natural Gas — New territory.

Authority for new territory was awarded as between two natural gas companies petitioning therefor to that company by whom the proposed construction could be more practically accomplished, where such company was also preferred by all of the boards of the villages involved.

[August 23, 1929.]

PETITION of a natural gas company for authority to operate in new territory; granted.

Appearances: Kenefick, Cooke, Mitchell & Bass, by Hon. Daniel J. Kenefick, Attorneys for Iroquois Gas Corporation; Stephen T. Lockwood, Attorney for Pavilion Natural Gas Company, and Stephen T. Lockwood, co-complainants.

Pooley, Commissioner: Iroquois Gas Corporation applies for permission, in the above entitled case, to extend its gas plant for the purpose of serving gas to the public in the villages of Silver Springs, Castile, and Nunda, and in the town of Eagle. The proposed extension involves construction in the towns of Arcade, Eagle, Pike, Gainesville, Genesee Falls, Castile, Portage, and Nunda, as well as in the three villages mentioned. The petitioner now operates in the town of Arcade, and its franchise covering that town was heretofore approved. It has obtained, or has been assured of, franchises covering the remaining municipalities. The proposed construction consists of 4.2 miles of

6-inch and 16.3 miles of 8-inch transmission lines, and distribution systems, in the three villages, the estimated cost of which is $403,800. It is estimated that the population of the area proposed to be served is 5,377, and that 1,277 consumers will be secured. It is also estimated that the average annual consumption per customer will be 70 thousand cubic feet, which at the rate of 75 cents per thousand cubic feet will yield a gross annual income of $64,417. The estimated operating expenses amount to $6,200, and the cost of gas, at 42 cents per thousand cubic feet, $36,070, making a net estimated return of $22,147, before depreciation and taxes.

The petitioner owns gas leases covering over 300,000 acres in the counties of Wyoming, Cattaraugus, and Allegany. It was free of substantial competition in this territory until recently and there was very little development east of Arcade. With the advent of competition, however, the petitioner will undoubtedly be compelled to develop its gas acreage, and the proposed transmission lines will form part of its major system for the gathering of gas and transportation of the same to the city of Buffalo. There appears to be a demand for gas service in this territory. The mayors of all three villages, as well as other witnesses, appeared and testified to that fact.

This application is opposed by the Pavilion Natural Gas Company and Stephen T. Lockwood. They allege that this territory as a whole can not be profitably served; that this territory is naturally tributary to the territory now served by the Pavilion Company; that the estimated cost of construction is low, and that the estimated number of consumers and the consumption of gas and amount of revenues are grossly excessive. The Pavilion Company and its affiliated companies serve various communities in the counties of Genesee, Wyoming, and Livingston. It has a franchise covering the entire town of Castile, except the village of Castile, but its service in that town appears to be limited to Silver Lake. It objects to the invasion of its claimed territory, and is willing to serve the villages in question, should it be so authorized. Its applications for franchises were considered by all three village boards concurrently with the petitioner's applications. The village mayors all testified that the village boards

unanimously preferred the service of the petitioner rather than that of the Pavilion Company.

The interests now operating the Pavilion Company acquired it a few years ago and have invested heavily in an artificial gas plant to augment its supply of natural gas and mixed gas is now being served throughout the territory. Its present rates run from $1.50 for the first thousand cubic feet, to 80 cents per thousand cubic feet for all consumption over 10 thousand cubic feet. It is said that the average rate is $1.28 per thousand cubic feet.

The Pavilion Company also claims that the fixed capital of the petitioner, as shown by its books, amounts to less than $125 per consumer, and that the reproduction cost of its fixed capital accounts, as shown in the pending rate case, is less than $275 per consumer, while the cost of the proposed construction would be $863 per consumer. This latter figure is arrived at by assigning to the territory proposed to be served the entire cost of construction, including the transmission line, and by assuming that 450 consumers will be attached; while the Iroquois Company assigns the transmission line to its major system, and estimates that nearly 1,300 consumers will be secured.

As above stated, the Pavilion Company has indicated its willingness to serve the three villages, though exhibits E, F, G, H, and I indicate that in doing so it would incur a substantial loss. It is improbable that the petitioner would undertake the proposed construction for the sole purpose of serving this territory. Its policy with respect to extensions of service in the past has been most conservative. Conditions now existing probably require the Iroquois Company, in order to protect its interests, to develop the gas lands it now controls in this territory. The Iroquois Company, by the manufacture and purchase of artificial gas and the production and purchase of natural gas, appears to have an adequate supply of gas to meet its present requirements. The communities in question can readily be served with gas obtained by the further development of its gas fields, and communities further east may also be supplied either directly or through operating companies now serving them.

The Pavilion Natural Gas Company holds no franchises in this

territory, which will not be served unless the petitioner is authorized so to do.

For these reasons we have concluded to grant the petition herein.

Commissioners Lunn and Brewster concur; Chairman Prendergast and Commissioner Van Namee not present.

MARYLAND PUBLIC SERVICE COMMISSION.

MAYOR OF HYATTSVILLE et al.

v.

WASHINGTON SUBURBAN GAS COMPANY.

[Case No. 2782, Order No. 14674.]

Valuation — Excess capacity — Gas plant.

1. The Commission recognized the advantage of a reasonable surplus capacity as compared with a deficiency of plant capacity and considered the extent of such excess in reaching its conclusions of fair value to offset a proposed allowance for omissions and contingencies, p. 7.

Valuation — Gas — Cost of property per customer — Comparison.

2. A comparison of cost of plant per customer between two different periods must make due allowance for an increase of price taking place during the life of the existing plant and during such periods, p. 7.

Valuation — Construction and overhead — Gas.

3. An allowance of 16.4 per cent was made for indirect costs or construction overheads of a gas plant otherwise having a fair value of $556,800, p. 7.

Valuation — Working capital — Gas.

4. An allowance of $17,500 was made for working capital including cash to the extent of one-eighth of the annual operating expenses of a gas utility otherwise having a rate base of $556,800, p. 7.

Valuation — Going value — Gas utility.

5. An allowance of $39,000 was made for going value of a gas utility otherwise having a rate base of $556,800, p. 7.

Return — Percentage allowed — Gas utility.

6. Gas rates calculated to yield a return of approximately 8.35 per cent were deemed excessive and a revision of rates was made estimated to produce not less than 7 and not more than 8 per cent of the fair value of the property, p. 8.

Valuation — Cost of financing — Consideration in return.

7. No specific allowance was made for cost of financing of a gas utility where such item was considered in the rate of return allowed, p. 8.

[August 13, 1929.]

COMPLAINT by the mayor and certain citizens against alleged excessive gas rates; rates revised.

Appearances: Thomas J. Tingley, People's Counsel; Caesar L. Aiello and Russell Hardy, for complainants; W. M. Wherry and Edgar Allan Poe, for respondent.

By the **Commission:** The Commission, having received a complaint on May 3, 1928, concerning the rates of the Washington Suburban Gas Company, which complaint was signed by the mayor of Hyattsville and thirteen others, representing as many communities served by the company, an investigation was instituted, and on May 2, 1929, by Order No. 14462, the matter was set for public hearing on May 23, 1929.

Two days were occupied by the hearing and the stenographic record occupies 599 pages.

The results of the Commission's investigation were presented by its chief engineer and chief auditor under direction of People's Counsel Tingley and the data was submitted in three exhibits.

The complainants submitted testimony and five exhibits in support of their complaint and the company presented testimony and four exhibits intended to show that its charges have not produced more than a reasonable return on the fair value of its property used and useful in the public service.

The Commission's chief auditor, Mr. Nodder, made a thorough study of the company's books and his tabulations, which comprised people's counsel Exhibit No. 2, showed the cost of property in use at December 31, 1928, less the amount in the depreciation reserve, to be $619,660. Mr. Nodder's exhibit also showed that the company had 3,019 customers at December 31, 1928, an increase of 312 customers or 11½ per cent during the calendar year.

Based on his study of operations in 1928 and preceding years, Mr. Nodder made what the Commission considers a very rea-

sonable estimate of the amount available for return in 1929, except that his allowance for depreciation should be approximately 1½ per cent of the value of the depreciable property (1½ per cent of $631,622=$9,474). The Commission has made this modification and concludes that the amount available for return in 1929 will be $59,700.

Mr. Wolf, the Commission's chief engineer, presented, as people's counsel Exhibit No. 1, a detailed inventory of the various elements of the property and a carefully prepared estimate of cost to reproduce the property used and useful in the public service at December 31, 1928.

The company's engineer, Mr. Forstall, accepted Mr. Wolf's inventory and, by a somewhat different procedure, arrived at practically the same amount for cost of reproduction, before adding overheads. Mr. Wolf's estimate was $622,510 and Mr. Forstall's was $637,711. Both engineers included in certain items an allowance for "omissions and contingencies" which aggregated about $7,500 in Mr. Wolf's estimate and $17,220 as applied by Mr. Forstall.

Mr. Wolf added 16.4 per cent for indirect costs which amounted to $102,030 and $14,940 for working capital, thereby making the reproduction cost $739,480. He estimated that the depreciable property was in 92½ per cent condition and that the depreciated cost of all used and useful property at December 31, 1928, was $685,140.

Mr. Forstall allowed $65,445 for working capital, nearly 10 per cent of the cost of the entire property as found by Mr. Wolf. He included an allowance of $40,599 for cost of financing and $80,000 for "going value" and deducted only $17,600 for accrued depreciation. By this means he estimated the fair value of the property to be $892,984.

The complainants attributed much importance to the fact that certain elements of the plant have excess capacity. It was shown that the manufacturing plant could meet present demands by operating only three days per week; that the present maximum daily demand is 373,000 cubic feet and that the two holders have a combined capacity of 560,000 cubic feet. The water gas sets and boilers also have liberal capacity.

The company contended that the excess capacity is only a reasonable margin to allow for expansion of business in the immediate future, and Mr. Wolf estimated that the "over building" represented not more than 5 per cent of the value of the property and probably not more than 3 per cent.

[1] The Commission recognizes the advantage of a reasonable surplus capacity as compared with a deficiency of capacity, but the extent of the excess in this plant has been considered in reaching the conclusion to eliminate the allowances for "omissions and contingencies," as made by Messrs. Wolf and Forstall, in determining the fair value of the property for rate-making purposes.

[2] The complainants very properly directed attention to the great increase, per customer, in the cost of the property used in rendering the service, since the year 1922. Their comparison showed that the cost of plant had increased 241 per cent, but they overlooked the fact that the amount used as cost in 1922 made no allowance for the great increase in prices which had taken place during the life of the then existing plant. If the amount used be increased to the extent found proper by the Day and Zimmerman appraisal made in 1924, and comparison be made with cost of plant at December 31, 1928, the increase is found to be approximately 88 per cent instead of 241 per cent.

The investment per customer was $242 in 1922, $289 at the end of 1927, and $272 on December 31, 1928. The increase in customers, comparing 1922 with 1928, was 67 per cent, which is considerably less than the rate of increase in cost of plant or in length of mains. This disparity can be explained by the fact that the more recent extensions of mains have been into comparatively undeveloped territory, and it is reasonable to expect that as new dwellings are erected in the districts served by these mains, there will be a steady decrease in "investment per customer." This conclusion is supported by the decrease which took place in 1928, as noted above.

[3–5] The Commission has given careful consideration to all the testimony and exhibits submitted at the public hearing and finds that the fair value of fixed physical property, at December 31, 1928, was $556,800. To this amount has been added

16.4 per cent ($91,300), which is the percentage used by Mr. Wolf and is considered reasonable, for indirect costs or construction overheads. An allowance of $17,500 has been made for working capital, including cash to the extent of one-eighth of the annual operating expenses. Going value is estimated at $39,000. The resulting rate base, as of December 31, 1928, is $704,600.

[6] The average value of 1929 additions is estimated to be $10,000 and the rate base for 1929 to be $714,600. The income available for return in 1929 is estimated at $59,700 and the resulting rate of return at present rates is 8.35 per cent.

The following tabulation will present these results in proper sequence.

Fixed physical property (December 31, 1928)		$556,800
Add 16.4 per cent for indirect costs		91,300
Total direct and indirect costs		$648,100
Working capital—		
Cash	$11,500	
Materials and supplies	6,000	
		17,500
Going value		39,000
Rate base, December 31, 1928		$704,600
Estimated average value of 1929 additions		10,000
Rate base for 1929		$714,600

Estimated income available for return, $59,700.
Estimated rate of 1929 return, at present rates, 8.35 per cent.

The Commission finds that the company's rates should be so reduced as to effect a reduction of $9,200 per annum in gross revenue, which is equivalent to approximately $8,000 in income, available for return. After this reduction has been made, it is estimated that the company's rate of return will be not less than 7 per cent and not more than 8 per cent.

[7] No specific allowance has been made for cost of financing, but that item has been considered in the rate of return allowed.

An order will be issued in conformity with this opinion.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES.

RE CUSTOMERS OF BOSTON CONSOLIDATED GAS COMPANY.

[D. P. U. 3530.]

Rates — Service charge — Gas.

The cost to a gas company of maintaining property exclusively used by domestic consumers, together with the service required exclusively on his account, was found to amount on the average to at least 50 cents a month regardless of consumption.

[August 7, 1929.]

PETITION of consumers of a gas company protesting against a new schedule of rates; new schedule permitted to go into effect.

By the **Department:** This is a petition of customers of the Boston Consolidated Gas Company protesting against the taking effect of a schedule of rates filed by the company on February 28, 1929, to become effective April 1, 1929. Classification No. 1 of the schedule provides for a service charge of 50 cents per month per customer plus a net commodity charge of 10 cents per hundred cubic feet for the first 100,000 cubic feet per month and of 8 cents per hundred cubic feet for all gas in excess of 100,000 cubic feet per month. It also provides for the billing of all gas at a gross price of 1 cent in excess of the foregoing prices, with the net prices applicable to bills paid within fifteen days of the billing date. Contained in the schedule are also other rates entitled "Classifications Nos. 2, 3, and 4."

Public hearings were held at which the protestants and the company were represented and presented their testimony.

The protestants filed a motion that the Department order the New England Fuel & Transportation Company to furnish certain information for use in the determination of the present case. This motion is denied.

The maximum net price now charged for gas is $1.20 a thousand cubic feet. The proposed new rate will effect an increase in all cases where the use of gas is less than 2,500 feet in a month, and a decrease where the use of gas is more than that amount. The service charge is designed to cover the cost to the

company of maintaining its pipes from the street main into the customer's premises, together with the meter, the reading of the meter, the keeping of the accounts applicable thereto, and the sending of bills to the customers for the amount due.

It is to cover the cost of property and service devoted exclusively to each individual customer, whatever his use of the gas may be. When the use of gas per customer was much larger than it is at present, and the amount of gas sold each year showed a healthy increase, it was not of much importance whether the company was assured that each customer should pay the carrying charges of the property and service devoted to his exclusive use. With the changed conditions in the gas industry and the falling use per customer, it becomes important that the company should not be required to carry customers who are a burden to it. Losses sustained through such customers necessarily are thrown upon the profitable customers, which is unjust. The importance of each customer sustaining the burden of cost due to serving him is indicated by the financial history of this company for the seven years from 1922 to 1928, inclusive. In these years the capital employed in the business increased from $32,018,865 in 1922 to $42,109,527 in 1928, while the revenue from the sale of gas increased from $10,672,117 to $10,784,228, and its income from all sources increased from $10,719,562 in 1922, to $10,951,415 in 1928. Thus in income the company has gained only $231,953 in earnings to meet the increased interest charges on $10,000,000 of increased capital employed. Moreover, the income per customer has dropped from $45 a year in 1922 to $37 in 1928. Nor does this tell the whole story, as the taxes to which the company is subject have increased from $1,051,238 in 1922, to $1,500,308 in 1928, an increase of $449,070 in the annual payment of taxes. It is obvious that a continued increase in the capital employed, without an increase in revenue sufficient to meet the increased interest and dividend requirements will result in financial disaster to the company. Increase in revenue can only be secured by an increase in volume of sales, a reduction in operating expenses, or an increase in price. In these years there appears to be little to criticise in the operation of the company. The company has reduced its annual operating expenses

from $7,619,259 in 1922 to $6,785,473 in 1928, a reduction in annual operating expenses of $833,786. Moreover, the cost of its gas in the holder has been reduced in the same period from 54.76 cents per thousand cubic feet to 34.99 cents per thousand cubic feet.

We believe that the cost to the company of the maintenance of property exclusively used by a customer, together with the service required exclusively on his account, amounts, on the average, to at least 50 cents a month, whether he uses any gas or not. A service charge of 50 cents a customer, plus the commodity rates provided in the proposed tariff, will return to the company, on the same volume of business as that of 1928, an income not greater than obtained under the present rates.

The advantage to the company to be derived from the proposed rates is the reduction in the commodity rate, which, it is hoped, will induce a larger use of the product and will more nearly insure the company against the carriage of customers at a loss.

We believe that the company is receiving a return no more than is adequate to insure its financial stability. Accordingly, we believe that the proposed rates should be allowed to go into effect.

In approving the proposed schedule of rates we think we ought to say that public statements of responsible officials of a public utility as to rates to be charged in the future, whether made before a legislative committee or this Department, ought not to be lightly made. Such statements were made in the hearing on the bill to repeal the Sliding Scale Act. These, we feel, were unfortunate. Nevertheless, we think that the condition of the company and the interests of the public which is dependent upon this company for service warrant our approval of the schedule of rates as proposed.

It is therefore *ordered,* That the schedule of rates filed by the Boston Consolidated Gas Company on February 28, 1929, to become effective April 1, 1929, which schedule was suspended from time to time, the last suspension being to August 1, 1929, be allowed to go into effect on October 1, 1929, effective as of that date.

LOUISIANA PUBLIC SERVICE COMMISSION.

CITY OF SHREVEPORT

v.

SOUTHWESTERN GAS & ELECTRIC COMPANY.

[Case No. 789, Order No. 647.]

Rates — Compromise rate revision — Natural gas.

1. A recommendation of one of the Commissioners, who, with the aid of an expert had completely investigated a natural gas rate controversy, was adopted without further formal procedure in order to afford to the city proper and immediate relief where such further litigation would result in a delay of at least two years, p. 13.

Rates — Minimum charge — Natural gas Consumers.

2. A minimum charge of $25 per month was allowed for industrial and manufacturing consumers of natural gas, p. 14.

Penalties — Natural gas.

3. A penalty of 5 per cent was permitted by the Commission to be added to the bills of a natural gas company as against manufacturing and industrial consumers when such bills were not paid within ten days from the date of rendition, p. 14.

Rates — Attraction of Industries — Natural gas.

4. A utility was given authority to sell gas to any new industries that might locate within its service boundaries at rates below those in its filed schedule provided that such new industries did not compete with those already located within such area, p. 15.

Rates — Attraction of industry — Competition between consumers.

5. The Commission by a rate order reserved to itself, for the purpose of allowing special low rates, the power either to determine or to appoint another Commission to determine whether or not a proposed new industry was engaged in competition with industries already established within a city, p. 15.

Discrimination — Industrial consumers — Contract rates — Gas.

6. The Commission in allowing special contract rates for industrial consumers of natural gas using in excess of 30,000,000 cubic feet per month provided that there should be no rate discrimination as between such consumers engaged in the same character of business and using substantially the same quantity of gas and under the same load factor, p. 15.

Parties — Rate order — Right of complaint.

7. A rate order of the Commission provided that the Commission, Commissioner, municipal, and utility officers, and other parties interested in a natural gas rate controversy between a city and a utility should have the right to make such complaints as they felt meritorious before the Commission during the operation of such order, p. 16.

[August 1, 1929.]

COMPLAINT of city against natural gas rates; rates revised.

By the **Commission:** By resolution of the Commission the above numbered and entitled proceeding was referred to Commissioner Fields for investigation, recommendation, and report.

[1] His findings are before us, in the following language, and they are adopted as the order of the Commission herein:

"In this cause the matter has been pending before the Commission for nearly two years, with many difficulties attached to a proper investigation on the part of the Commission, the complainant, and the defendant, and that is the only reason that the matter has not been pressed for earlier disposition of the issues. The Commissioner in charge of this matter has appointed his own expert, who has made an independent investigation which has been of great assistance, assisted in part by two other experts, one representing the city, or having attachments with the city, and the other on the part of the utility. Because of the general conditions existing here in Shreveport and the necessity for a readjustment of the industrial rate, the present adjustment of which is seriously impairing the growth of Shreveport in the opinion of the presiding Commissioner, and because of the fact that this matter would call for an investigation taking months to complete, and would undoubtedly terminate in litigation which would preclude the putting into operation of a rate that would bring about a better situation, the presiding Commissioner is of the opinion that the entire matter can be better regulated at this time by putting into effect the proposal made by him, with the request that such proposal form the basis of an order of the Commission. If this litigation were continued it would, in all probability, tie up matters for at least two years, and thereby preclude the manufacturing and industrial consumers of the city of Shreveport from getting proper and adequate relief at this time. There is not much difference, or any great difference, between the proposal of the Commissioner and the proposal of the city, which has been used as a guide, to a certain extent, by the Commissioner in preparing the proposed schedule, together with the reports, statements, and recommendations of the expert, J. J. Kean.

After several conferences, resulting in differences of opinion between the city and the other parties hereto on several phases of this schedule, and objections by the utility as a part of the schedule, the Commissioner is convinced that the thought and opinion of the parties and of the Commissioner is more nearly in accord than one would assume, and certainly nearer together than they were when this case was begun. The presiding Commissioner, has, therefore, concluded to end this matter at this time, in order to give relief to the city of Shreveport and to avoid confusion and end litigation, and to give to the manufacturing and industrial consumers immediate relief. Accordingly, the presiding Commissioner will recommend to the Commission the adoption of the following scale; effective as of August 1, 1929, for manufacturing and industrial consumers in the city of Shreveport and in the town of Bossier City and their environs to-wit:

Monthly Consumption.

First 300 thousand cubic feet at 20 cents per thousand.
Next 700 thousand cubic feet at 16 cents per thousand.
Next 1000 thousand cubic feet at 15 cents per thousand.
Next 3000 thousand cubic feet at 14 cents per thousand.
Next 5000 thousand cubic feet at 13 cents per thousand.
Next 10000 thousand cubic feet at 12 cents per thousand.
Next 10000 thousand cubic feet at 11 cents per thousand.

[2, 3] A minimum charge of $25 per month per consumer shall be collected for those consumers to whom the above rates apply. A penalty of 5 per cent shall be added if bills are not paid within ten days from date they are rendered.

The utility has desired to make a minimum charge of $35, and while this is less than is applicable in a number of other cities, the Commissioner in charge considers the situation at Shreveport such as to not justify such a demand, and will recommend, instead, a minimum charge per month of $25 per consumer, to be collected from the consumer, and to which the above rates shall apply, with a penalty of five per cent to be added if bills are not paid within ten days from the date they are rendered.

[4, 5] In order to encourage the location of new manufacturing industries within the city of Shreveport and the town of Bossier City and their environs, the presiding Commissioner will recommend the adoption by the Commission of a special factory rate, as an inducement for factories to locate in the city of Shreveport and surrounding territory. Realizing that the legality of such an order is based largely upon the acquiescence therein by the utility, authority will be granted the distributing company, for a period of one year after the date of this order, with the approval of the Commission, to sell gas to any such new industries which may locate within the city of Shreveport and the town of Bossier City and/or their environs, at rates below those provided in the above schedule, applicable only to manufacturing and industrial consumers, provided, however, that no such rate shall be granted to any new industry which may engage in a business competitive with any industry at that time, or then operating within the city of Shreveport and/or the town of Bossier City and/or their environs and being at that time served by the utility. The authority to determine whether such prospective consumer is a competitor of any such existing industry is to be under the jurisdiction of the Louisiana Public Service Commission, or a Commissioner to be designated by the Commission for the purpose of determining such fact, with the right reserved to such new industry and such alleged pre-established competitive business to appear before the Commission or Commissioner so designated at a public hearing, if either or both should so desire, for inquiry into the facts after due notice given, and the ruling of the Commission therein shall be conclusive.

[6] Consumers, other than those referred to in the next preceding paragraph of this recommendation, who may use more than 30,000,000 cubic feet of gas per month, shall be served under special contracts, at rates to be agreed on between the utility and the consumer, provided, however, that in no case shall there be any discrimination in rates as between industrial consumers engaged in the same character of business and using substantially the same quantities of gas and under the same load factor, reserving to any party who may be aggrieved or who has

cause to believe that he will be affected by said rate to file his protest with the Commission, and to be granted the right of hearing should the Commission so decide.

As an innovation, and in order to clarify the situation further, it is recommended that the special rates for internal combustion engines, prescribed in the order of this Commission of date May 10, 1923, be revoked, and the special temporary rate of 6 cents per thousand feet for industrial gas heretofore authorized be likewise canceled. It is further recommended that all consumers who may not fall within the class of persons entitled to be served under the provisions of this recommended order, shall continue to pay the rate prescribed in said order of May 10, 1923, except as hereby supplemented and amended, if these recommendations be adopted by the Commission. It is further recommended that no change in the existing domestic rates, and that the plea of the utility to increase such minimum charge from 50 cents to $1 be denied.

[7] It is further recommended that the order issued herein shall contain a reservation of the right of the Commission or the Commissioner of the Third Public Service Commission District, or the city of Shreveport or the town of Bossier City, or their municipal officers, and of the utility, and of all other interested parties, to make such complaints as they may feel will be meritoriously placed before the Commission as to the rates in question, though it is the intention of the presiding Commissioner in making these recommendation that these rates shall be tried out as an experiment for a period of twelve to eighteen months. The presiding Commissioner asks that the Commission seriously consider these recommendations, and attaches in support of his recommendations the documents marked 'Commission–1' to 'Commission–3,' inclusive, being pages 1 to 11, inclusive."

Having under consideration the foregoing recommendations, it is *Ordered,* that the same be made the final order of the Louisiana Public Service Commission in the above numbered and entitled proceedings, the rates, rules, and regulations as provided for therein, and in the territory therein outlined, to become effective as of date August 1, 1929.

P.U.R.1929E.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

RE PUBLIC SERVICE ELECTRIC & GAS COMPANY.

Valuation — Necessity for finding — Appraisals.

1. No exact value for a gas utility was found by the Board where the proposed rate schedule would not yield an excessive rate of return on any of the three appraisals offered by the contesting parties, p. 20.

Discrimination — Gas — Customer costs.

2. A minimum charge permitting a gas consumer to use so much supply for the initial charge that the difference left to cover customer cost is inadequate was held to be discriminatory as against other classes of consumers, p. 24.

Rates — Gas — Promotional rates.

3. A promotional rate schedule was approved to place the cost of gas more nearly upon a competitive basis in order to prevent loss of business and to create an additional demand for cooking, water heating, house heating, and industrial purposes so that the future stability of the industry might be assured, p. 24.

Rates — Meters — Gas and electricity.

Discussion and analysis of the development and use of meters in the measurement of gas and electric consumption, p. 20.

[June 27, 1929.]

APPLICATION of a gas and electric company for a change in rates; rates adjusted.

Appearances: Thomas N. McCarter, E. W. Wakelee, and George H. Blake, for Public Service Electric and Gas Company; John J. Treacy and James F. Minturn for city of Jersey City, Hoboken, Bayonne, Union City, Harrison, West New York, Weehawken and Secaucus; Jerome T. Congleton, Charles M. Myers, Frank A. Boettner, by J. H. Henegan, for city of Newark; Jerome T. Congleton, for township of Millburn; Charles H. Stewart, for town of Irvington; F. J. Gassert, for town of Harrison; J. H. Cooper, for town of Kearny; James Benny, for city of Bayonne; E. C. Guenther, for Union City; J. J. Weinberger, for city of Passaic; R. F. Davis, for Bloomfield; J. B. Brown and Samuel Kenworthy, for Belleville; W. A. Calhoun, for city of Orange; Rosco Palese and Lewis Liberman,

for city of Camden; Harry V. Osborne, for Maplewood; Alfred J. Grosso, for West Orange; Thomas H. Haggerty, for city of New Brunswick; Edward I. Berry, for Merchantville; R. Wayne Kraft, for borough of Audubon; F. N. Jess, for Haddon Heights and Magnolia; David H. Slayback, for Verona; F. W. Freeman, for township of Wayne; Charles E. Bird, for city of Trenton; L. M. Reilly, for Lyndhurst; William C. Asper, for township of Weehawken; E. W. Wollmuth, for Newark Chamber of Commerce; Henry Grois, for Baker's Organization; Cornelius Rooney, for Essex Trade's Council; Mrs. Sadie Carey and Owen Coogan, for East Newark; Frederick S. Ranzenhofer, for city of Clifton; George M. Hillman, Jr., for Chester township and Riverside; Charles F. Lynch, for city of Paterson; Edward F. Nugent, for city of Elizabeth; A. E. Scheflin, for township of Pensauken; Walter Carson, for Moorestown; C. E. Powell, for Beverly; A. Edmund Williamson, for Chamber of Commerce of the Oranges and Maplewood.

By the **Board:** The Public Service Electric & Gas Company, in December, 1928, filed new schedules of rates for both gas and electric service. The changes effected in the electric schedule are in the nature of a decrease in rates. The saving in gross revenue thereby made available to the consumers is estimated to be approximately $1,380,000 for 1929. These rates were allowed to become effective in accordance with the proposal of the company.

The proposed gas schedule in its entirety is estimated to increase the company's revenues approximately $400,000, or about 1.5 per cent. This schedule, however, involves increases to some consumers and decreases to others. The gas rates proposed are as follows:

For	the	first	200	cu.	ft.	or less per	meter per month	.....	$1
"	"	next	49,800	"		per month	.....	9.5¢ per	C.
"	"	"	50,000	"	"	"	.....	9.0¢ "	"
"	"	"	400,000	"	"	"	.....	8.5¢ "	"
"	"	"	500,000	"	"	"	.....	8.0¢ "	"
"	"	"	1,000,000	"	"	"	.....	7.5¢ "	"
"	"	"	1,000,000	"	"	"	.....	7.0¢ "	"
"	"	"	1,000,000	"	"	"	.....	6.5¢ "	"
"	all	over	4,000,000	"	"	"	.....	6.0¢ "	"

P.U.R.1929E.

The rates now in effect for ordinary residential and commercial service are as follows:

For	the	first	20,000	cu.	ft.	per	month	.....	$1.20	per	M cu. ft.
"	"	next	30,000	"	"	"		.....	1.15	"	" "
"	"	"	50,000	"	"	"		.....	1.10	"	" "
"	"	"	50,000	"	"	"		.....	1.05	"	" "
"	"	"	50,000	"	"	"		.....	1.00	"	" "
"	"	"	100,000	"	"	"		.....	.95	"	" "
"	"	"	500,000	"	"	"		.....	.90	"	" "
"	all	over	800,000	"	"	"		.....	.85	"	" "

(Rates for house heating and wholesale demand are not herein quoted.)

The proposed rate would increase the cost of gas to all consumers using less than 3,300 cubic feet of gas per month, and decrease the charges of all consumers using in excess of 3,300 cubic feet.

At the request of the municipalities appearing in opposition to the proposed change in gas rates, the Board engaged, at the opening of the hearing, Mr. Adolph J. Luick, an engineer of experience, for the purpose of making a study of the company's condition and the effect that the proposed gas schedule would have upon the various classes of consumers and upon the company's revenues and earnings. Upon stipulation of all parties, this investigation was entirely independent and Mr. Luick did not represent the Board or any of the interested parties. Mr. Luick, on February 1, 1929, filed his report with the Board, copies of which were supplied to all parties in the case. In effect his report found, on the valuation assumed by him, that the rate schedule as proposed would not produce an excessive rate of return to the company on the value of its property used and useful in the service of the public, and further that the plan of the rate schedule eliminated improper discrimination existing in the present rate schedule and gave to the various classes of service a more equitable distribution of costs. Mr. Luick also found that the proposed rate schedule enabled the company to make such reductions in the consumption charges as to make the use of gas attractive in larger quantities by domestic and industrial users. He termed the rate a promotional rate designed to attract additional business to the company by means of a lower base rate.

The valuation of the property assumed by Mr. Luick for the purpose of ascertaining whether or not the resultant increased revenue to the company produced an excessive return is $125,314,277. This value the company's counsel contended was not the true value of the property, but they agreed to accept it for the purposes of determining the validity of the rate schedules as filed by them in the instant case, and as a basis for allocation of costs.

The company offered through Professor Henry C. Anderson, of the firm of Cooley & Anderson, proof of what they contended to be the true value of the property. This witness testified that the true value of the property for rate-making purposes was $197,673,670, which includes 30 per cent for going value.

[1] On behalf of the municipalities, Professor Edward W. Bemis made various criticisms and adjustments of the value assumed by Mr. Luick and found the rate base on the reproduction theory to be $114,408,002. The annual return of $8,843,869 under existing rates affords a return of 7.73 per cent on this valuation. The rate of return to the company found by Mr. Luick in accordance with his valuation is 6.25 per cent. It is not necessary to consider the Anderson value, or to determine for the purposes of this case the exact value of the company's property. Whether the Board uses the Luick value or the Bemis value, the proposed rates would not produce an excessive return to the company and, therefore, no exact value will be found by the Board; but for the purpose of the findings and determinations hereinafter set forth, either the Bemis or the Luick valuations may be accepted.

The next question to be considered is the form of the proposed gas rates and their effect on different classes of consumers.

In the early days of both gas and electricity, a flat charge was used, based on the number of lights installed by the customer. Nearly every customer belonged to the same general class and this form of charge served as a useful make-shift in the absence of meters; but because it made no difference in the bill, customers became wasteful and meters were developed and the straight line meter rate of one block was put into effect.

As business grew there developed a difference in the character

of use by different classes of customers. The necessity of a more accurate measure of the cost of service became imperative with the electric utilities because they could not commercially store electricity, but must at all times be ready to meet the demands of the customers, especially those using electricity for power. This condition of affairs led to a change in methods, separating electric costs into three general classes. (See the Board's Memorandum on the Minimum Charge for Electric Light and for Electric Power Service, 1 N. J. P. U. C. R. 235 and 254.)

These classes of costs were in brief as follows:

1. The customer costs or costs varying directly with the number of customers. The total monthly customer costs divided by the number of customers gives the individual customer cost.

2. The demand costs, varying with the units of horse power or kilowatts which the customer may demand from the company. These costs have been frequently defined as the cost of a plant and system ready to give service but giving none. The totals of such monthly costs divided by the number of demand units (in horse power or in kilowatts) gives the monthly demand charge or rate per unit.

3. The remaining costs, varying with the units of energy used by the customer as measured by his meter. The total for a month of such costs divided by the corresponding units of consumption give the cost per unit.

With each of these classes of costs known for a given class of customers, either a three, two, or simpler one part block system of rates may be developed which would be fair for both customer and company. The early knowledge of this form of rate analysis has assisted in the growth of the great electric utilities of the country.

In the minimum charge for lighting customers, above referred to, the Board included the customer cost as above defined plus a small element of demand for the carrying cost of service and meter (strictly a demand cost) and an average small use of current.

The gas industry can store its commodity and the demand of the customer can be largely met from stored gas, thus reducing the peak demand on plant capacity and in a measure the

necessity for such a close analysis of costs as was forced on the electric industry. But the World War involved the industry in a maelstrom of quickly rising prices and the companies sought relief through horizontal increases in rates; but this not meeting the cost of serving the small consumers, the "service charge" was developed. This as generally understood, included those costs entailed upon the company after the gas left the street mains, plus the carrying cost of the customer's service pipe and meter which would be used by the individual customer only and not by others in the system. Some Commissions permitted "service charges" covering all of these costs, others a portion only of this cost. (Re New Jersey Northern Gas Co. VI N. J. P. U. C. R. 650.) Only with the small bills is the service charge or customer cost an important element.

Using Mr. Bemis' figures, this customer cost is about 58 per cent of the bill of $1, whereas it would be negligible in a bill of $50, but is a real cost, nevertheless, for all customers and only relatively is it any larger for one customer than for another as even the largest consumer pays for this cost and the other costs in the blocks of consumption used by him.

The service charge being generally misunderstood has led to the adoption of small initial blocks of gas, at a comparatively high rate, which carried the equivalent of a service charge in the first block. The first block of the proposed schedule, 200 cubic feet for $1, is of this kind. In general it is not a novel form of rate except for the very small quantity of gas included at a comparatively higher rate.

Mr. Luick, in the present case, apportioned operating expenses and fixed charges as follows:

1. Production demand, including such costs as interest, taxes, and depreciation on plant investment and certain portions of maintenance and operating costs of the plant.

2. Distribution demand, including interest, depreciation, and taxes on a portion of the investment in distribution system, holders, pumping equipment, and certain portions of distribution maintenance and operating costs.

3. Customer costs, including expense of bookkeeping, billing, collecting, setting, removing, and repairing meters, gratuitous

complaint service, office rents, meter reading, etc., as well as fixed charges and maintenance on certain portions of physical property, such as meters, services, mains, etc.

4. Commodity costs, consisting of material and labor, expenses and repairs directly entering into the production of gas, and which are directly proportionate to the volume produced.

For practical purposes the costs under classes 1 and 2 are ordinarily combined to form "demand costs," thus simplifying the resultant rate structure.

In his analysis, Mr. Luick followed the general form recommended by the rate committee of the American Gas Association. The customer cost in this form of analysis bears no close relation to the customer cost as set forth in what is known as the Doherty 3-part rate analysis, but introduces some contentious and speculative elements. Mr. Luick found a customer cost of $1.404 per month due to the inclusion of a large percentage of plant which under the Doherty system is included in the demand charge. As defined by Doherty, customer cost would shrink to about one-third of Luick's. The Luick customer cost in total would exceed that under the Doherty theory by about 30 per cent of total revenue of the company. This results from a speculative tendency to place as large a proportion of the total rate in a fixed customer cost as possible. Mr. Luick himself said that such a form of rate might be considered the ideal but would not be a practical form of rate to be adopted.

The rate proposed by the company is $1 for the first 200 cubic feet and 9.5 cents per hundred for the consumption above 200 up to 50,000 cubic feet. Taking the cost of gas at 9.5 cents per hundred, the first 200 cubic feet would cost 19 cents, which would leave 81 cents as the amount of the customer cost or service charge. This is much lower than the figure of $1.404 shown in Mr. Luick's analysis but it still contains speculative elements. The Board is not required to go too far in the realm of speculation, (Acquackanonk Water Co. v. Public Utility Comrs. 100 N. J. L. 169, P.U.R.1924E, 436, 125 Atl. 33), or to give too slavish adherence to theory (Georgia R. & Power Co. v. Railroad Commission, 262 U. S. 625, 67 L. ed. 1144, P.U.R. 1923D, 1, 43 Sup. Ct. Rep. 680).

Mr. Bemis found the customer costs to be 58.9 cents but recommended, in view of the difficulty of securing a general understanding of such costs and as a matter of public policy, that no service charge imposed in connection with the $1 minimum bill should exceed 50 cents per month.

[2] Under the present schedule of rates, a customer can use 800 cubic feet for a minimum bill of $1. If the cost of gas be taken at 9.5 cents per hundred, 800 cubic feet would cost 76 cents, leaving only 24 cents for customer cost or less than half the figure found by the expert for the municipalities, or taking the customer cost of 58.9 cents, shown by Mr. Bemis, from the $1, would leave the cost of 800 cubic feet of gas as 41.1 cents or 5.1 cents per hundred. On the other hand, the customer using more than the minimum amount of 800 cubic feet must pay 12 cents per hundred even if he use as much as 20,000 cubic feet. This situation is clearly discriminatory as against the latter class of customers.

[3] Not only are the present rates discriminatory as between different classes of customers, but they have serious consequences for the company. Under modern social and industrial conditions, the gas industry has practically lost its lighting business and is dependent principally upon the use of gas as fuel. Here it is in competition with other fuels such as oil and coal. And so the cost of gas must be placed more nearly on a competitive basis in order to prevent loss of business and to create an additional demand for gas for cooking, water heating, house heating, and industrial purposes so that the future stability of the industry may be assured. One-family residences are giving way to multi-family dwellings. Mr. Young testified that only 40 per cent of the company's domestic customers live in one-family houses. People, especially those living in apartments, change their habits of living so that the tendency is to reduce materially the use of gas.

On the other hand, the schedule proposed by the company presents a radical change in the character of rates. Radical changes are apt to involve substantial losses in customers, which in turn affect the revenues of the company. The matter must also be viewed from the standpoint of sound public relations.

In the Board's opinion, the general form of the proposed schedule is not unreasonable, although the exact rates proposed for the first block are unreasonable. It is apparent from the testimony that the first block should be less than 800 feet, the amount included in the minimum bill under the present schedule, and more than 200 feet as proposed. But if the first block is increased from 200 to, say, 300 or 400 cubic feet, the cost of the additional gas which may be obtained for $1 must be recouped in the following block if approximately the total revenue produced by the present schedule or the proposed schedule is to be obtained.

The Board has carefully considered various rate schedules all formed on the general design of that presented by the company but less radical in their difference from the existing schedule and has come to the conclusion that the following rate would be reasonable and would be fair to all classes of customers as well as to the company:

400 cubic feet for $1.
The next 1,000 cubic feet at 11.0 cents per 100 cubic feet.
The next 48,600 cubic feet at 9.5 cents per 100 cubic feet.
Thereafter in accordance with the schedule filed by the company.

After the two small initial blocks are used, this makes a base rate for gas of 95 cents per thousand cubic feet against the present rate of $1.20 per thousand. Such a reduction is clearly in the public interest.

For a consumer taking 1,400 cubic feet of gas, his bill would be $2.10, which might be considered as including customer costs of 56 cents and a consumption charge of 11 cents per hundred, or $1.54. It will be noted that this customer cost of 56 cents is somewhat lower than Dr. Bemis' figure of 58.9 cents.

For consumers of more than 1,400 cubic feet, the service charge might be figured at 77 cents, but this is offset by the low consumption rate of 9.5 cents per hundred and on such customers a service charge bears lightly.

Under this proposed schedule the bills of all customers taking more than 1,400 cubic feet would be exactly 4 cents less than

under the schedule filed by the company. For the smaller customers the advantage would be even greater.

Under the proposed schedule, bills for 400 cubic feet or less would be identical with the bills under the present schedule, namely, $1. Bills for more than 3,000 cubic feet would be less than under the present rates. The difference under the proposed schedule and under existing rates for consumption between 600 and 3,000 cubic feet is shown in the following table:

Cubic Feet.	Present Schedule.	Alternative Schedule.
600	$1.00	$1.22
800	1.00	1.44
1,000	1.20	1.66
1,200	1.44	1.88
1,400	1.68	2.10
1,600	1.92	2.29
1,800	2.16	2.48
2,000	2.40	2.67
2,200	2.64	2.86
2,400	2.88	3.05
2,600	3.12	3.24
2,800	3.36	3.43
3,000	3.60	3.62

The schedule of rates suggested would bring to the company on the basis of 1928 sales of gas no more gross revenue than is realized under the present rates. The president of the Public Service Electric & Gas Company stated very clearly in this hearing that the main purpose of the company was to secure the form of rate which would induce a larger use of gas and that the increase in revenue from the present volume of sales was a mere incident.

It should be emphasized that the charge of $1 for the first 400 cubic feet is imposed on each and every customer, large or small, and that each customer must pay the identical rate for all gas consumed by him at the various block rates. Contrary to the opinion expressed by some parties at the hearing, the record does not show that the very small consumers are necessarily poor people; on the other hand, the evidence indicates that frequently well-to-do residents in apartment houses use very little gas.

The Board, therefore, finds and determines:

1. That the schedule of rates as filed is unjust and unreasonable and approval thereof is hereby denied.

2. That the general form of the schedule and the purpose sought to be secured thereby in building up the sales of the company to the ultimate benefit of all consumers is hereby approved.

3. That in the Board's opinion the existing schedule of rates is unjust and unreasonable in that it effects discrimination as between certain customers.

4. That the following schedule of rates is just and reasonable:

For the first			400	cu. ft.	or less	per meter per month	.....	$1
" " next			1,000	"	per	month	.....	11.0¢ per C.
" " "			48,600	"	"	"	.....	9.5¢ " "
" " "			50,000	"	"	"	.....	9.0¢ " "
" " "			400,000	"	"	"	.....	8.5¢ " "
" " "			500,000	"	"	"	.....	8.0¢ " "
" " "			1,000,000	"	"	"	.....	7.5¢ " "
" " "			1,000,000	"	"	"	.....	7.0¢ " "
" " "			1,000,000	"	"	"	.....	6.5¢ " "
" all over			4,000,000	"	"	"	.....	6.0¢ " "

5. It is recommended that the company file this schedule of rates to become effective with the July bills.

MICHIGAN SUPREME COURT.

PEOPLE OF THE STATE OF MICHIGAN EX REL. ATTORNEY GENERAL

v.

MICHIGAN BELL TELEPHONE COMPANY.

[No. 3432.]

(— Mich. —, — N. W. —.)

Return — Payment to affiliated company — Intercorporate relations.

A decision of the court refusing to recognize any corporate fiction as existing between a national telephone holding company and a local subsidiary was modified so as to permit the payment by the latter to the former of a reasonable amount in compensation for actual services performed.

[June 20, 1929.]

SUIT by the Attorney General of the state of Michigan against a telephone company; former decision of the court modified. For original decision, see P.U.R.1929B, 455.

By the **Court**: This matter having been heard upon the petition of the plaintiff, plea of the defendant, the replication of the plaintiff thereto and the proofs and briefs and arguments of counsel for the respective parties, and due consideration thereof having been had by the court, and it appearing that the material charges set forth in the information in said cause are true,

Now, therefore, by reason of the matters of fact and of law found and determined by the court in its opinion filed herein on the 29th day of March, A. D. 1929, P.U.R.1929B, 455, 224 N. W. 438, it is considered and adjudged that the defendant, the Michigan Bell Telephone Company be and is hereby ousted of the claimed right and privilege to have credit in a computation of rates for payments made by it to the American Telephone & Telegraph Company under and as upon the license contract purporting to exist between the said Michigan Bell Telephone Company and the American Telephone & Telegraph Company dated the 16th day of June, 1919, together with amendments and supplements thereto, *but nothing herein contained shall be construed to affect the right of the Michigan Bell Telephone Company upon its making proof thereof in accordance with the requirements of due procedure to have included in such computation of rates the reasonable value of the services rendered and the facilities furnished by the American Telephone and Telegraph Company;* and it is further considered and adjudged that the plaintiff do recover of the defendant, the Michigan Bell Telephone Company, its costs and charges by it sustained in and about the above mentioned action.

P.U.R.1929E.

OHIO COURT OF APPEALS, CUYAHOGA COUNTY, EIGHTH DISTRICT.

CITY OF CLEVELAND

v.

EAST OHIO GAS COMPANY.

[No. 9976.]

STATE OF OHIO EX REL. EDWARD G. TURNER, ATTORNEY GENERAL

v.

EAST OHIO GAS COMPANY.

[No. 9979.]

(— Ohio App. —, — N. E. —,)

Service — Duty to serve — Statutory obligation.

1. One of the ways in which the obligation of continuing service can be imposed upon a utility is by a statute specially imposing such a duty, which thereby becomes a part of the utility's contract either with the state or with the city or both, p. 36.

Service — Abandonment — Consent of Commission — Gas utility.

2. A gas utility being one of the utilities named within the state Public Utilities Act after its amendment in 1919, must first apply to the Commission before withdrawing its service, p. 39.

Constitutional law — Police powers — Evasion by contract.

3. An act of the legislature, in the exercise of its police power to regulate public utilities, imposing restrictions upon the discontinuance of public utility service, cannot be defeated by a contract between a utility and a municipality, p. 39.

Constitutional law — Duty to serve — Limitation on contractual powers.

4. A statute requiring a utility to secure permission of the Commission before discontinuing service is not an unconstitutional limitation upon the power of municipalities to contract, where the statute does not make the approval of the Commission a condition precedent to the execution of such contract, p. 41.

Service — Duty to serve — Contract.

5. Where a contract for utility service between a gas utility and a municipality has been made subsequent to and with reference to a statute requiring the approval of the Commission before such service can be discontinued, such a statute becomes part of the contract and it is just as much a duty of the company to obtain consent of the Commission to withdraw service as it was to furnish service under the contract, p. 42.

Constitutional law — Police powers — Discontinuance of service.

6. A statute forbidding a gas company operating under contract with a municipality to withdraw its service upon the expiration of such contract without obtaining permission from the Commission is a valid exercise of the police power of the state and is not unconstitutional, p. 43.

Injunction — Discontinuance of service — Statutory prohibition.

7. Both a city whose contract with a gas utility for service had expired and the state were held to be entitled to a perpetual injunction to prevent the company from withdrawing service from the city without first making application for and obtaining the consent of the Commission where there was a valid statutory prohibition against the discontinuance of such service without such approval, p. 43.

[June 14, 1929.]

SUIT IN EQUITY by the city of Cleveland and the state of Ohio for perpetual injunction to enjoin the discontinuance of service within the city of Cleveland by the defendant gas company; injunction allowed.

Appearances: Carl F. Shuler, Henry S. Brainard, Newton D. Baker, and Raymond J. Jackson, counsel for plaintiff; Tolles, Hogsett, and Ginn, and William B. Cockley, counsel for defendants.

Vickery, P.J.: These two cases, to-wit, the City of Cleveland v. East Ohio Gas Company, and the State of Ohio ex rel. Turner v. East Ohio Gas Company, come into this court on appeal from the common pleas court of Cuyahoga county, and in each case the purpose is the same; that is, to prevent the East Ohio Gas Company, a public utility within the state of Ohio from discontinuing its service in the city of Cleveland and to the inhabitants thereof, without first filing an application with the State Utilities Commission and getting its permission to discontinue, or its refusal to allow it to discontinue before it can, of its own volition, terminate the service that it has heretofore been rendering to the people of Cleveland, under and by virtue of a contract between it and the city of Cleveland.

The history of the gas litigation in Cleveland is exceedingly interesting, especially to this member of the court, who, eight years ago, sat with his present associate Judge Sullivan and former Judge Ingersoll for a full month and heard the claims of both the city and the East Ohio Gas Company. At that time

the issue was mainly the inability of the gas company to supply the city of Cleveland with gas, and volumes of testimony were taken to show that the supply of gas had practically been exhausted. The evidence in that case showed that 75 per cent of all the gas in Ohio had been exhausted and at least 60 per cent of the supply in the West Virginia field which supplied the Hope Gas Company, which in turn supplied the East Ohio Gas Company with a large share of its product for distribution, was likewise exhausted. *Then* the question was as to the rate to be charged and the contention was mainly based upon the argument of the diminishing supply of gas and the inability of the gas company to furnish gas, as it seemed, for a very long period of time, and I think, if the record in that case is examined, the testimony of such engineers as Mr. Ubelaker of New York city on the part of the gas company, as well as that of State Geologist both of Ohio and West Virginia, will show that it was a very short time indeed that any company would be able to furnish natural gas.

Now it is admitted that the East Ohio Gas Company has the gas for sale and the city of Cleveland and its people need the gas and want it, and it seems that the only difficulty is that the parties cannot agree upon the rate. It does seem as though the two parties, one who has a product to sell and the other a desire to buy that product, should be able to meet upon a common ground. The gas question is too serious a one to the people of Cleveland to be made the foot ball of politics or for anybody to make a political issue out of the price of gas. But, however that might be, it seems that the city of Cleveland and the East Ohio Gas Company had come to a parting of the ways and the history of the gas question in Cleveland is, as already stated, very interesting.

In 1902, or thereabouts, when the East Ohio Gas Company first made its advent into the city of Cleveland, there were two local gas companies, the Peoples Gas, Light & Coke Company and the Cleveland Gas, Light & Coke Company, one serving the west side and the other serving the east side. When the East Ohio got its franchise, it soon absorbed and did away with the other two companies and it became a monopoly and the sole

server to a large extent to the vast number of people in Cleveland for their light and fuel. When the East Ohio Gas Company absorbed and destroyed the two companies then existing in Cleveland, one serving the west side of the river and the other the east side of the river, it was permitted to capitalize the value of these properties, which capitalization was taken into account in order to fix a proper rate which the East Ohio Gas Company might charge for gas in order to give a fair return to the stockholders of the East Ohio Gas Company. It became a monoply in this line in Cleveland and served the people of Cleveland from that time down to the present, first, under a franchise, I think, for ten years, and then a renewal of that franchise for another ten years at an increased rate to the consumer. That contract expired in 1921 when the litigation between the city and the gas company took place, and the decision on that question was made by this court in October, 1921.

As a matter of fact, the city of Cleveland is not much more than a nominal party in this action, nor is the state of Ohio anything more than that. The real parties in interest are the more than two hundred thousand users of natural gas, and had it not been necessary to have a franchise to lay pipes in the streets and public places of Cleveland, the gas company, if it could have got to the consumer, could have made an individual contract with each consumer; but in order to get to the place where the gas was consumed, it was necessary to have a franchise from the city of Cleveland to lay its pipes in the streets and public places in the city; and in order to insure uniformity of rates, it was proper that the city of Cleveland should make the contract for the benefit of all the people.

Now this franchise is perhaps what might be dubbed an indeterminable franchise, and the rates could, by contract, be changed at any time by a contract between the city of Cleveland and the East Ohio Gas Company for a period of perhaps not to exceed ten years.

Under § 4, Article 18 of the Constitution of Ohio, municipalities in Ohio have full right and power to make contracts with respect to the operation of utilities within its confines, and

under that section of the constitution Cleveland exercised its right to make a contract.

The East Ohio Gas Company has at this time invested in the city of Cleveland and somewhere between thirty-five and forty millions of dollars, and the people of Cleveland, in laying pipes into their homes and supplying the apparatus and fixtures necessary for the use of gas, have expended probably a sum equal to that expended by the gas company; so here two parties, the public on the one side, which in this litigation is represented by the city of Cleveland, and the East Ohio Gas Company on the other side,—the East Ohio Gas Company admitting that it has the gas and is ready to supply the city of Cleveland, and the people of Cleveland, of course, anxious to be supplied, are come to a stalemate and the matter has gotten into court.

The question to be determined in court in the present litigation,—for it must be remembered that it is neither the intent to fix a rate nor to show what is a proper rate—is whether the East Ohio Gas Company can withdraw its service without first making an application to the Public Utilities Commission, for permission to discontinue such service, and if the Commission thought it expedient or to the best interests of all concerned to permit such discontinuation of service, it might do so.

It is admitted in this case that the East Ohio Gas Company serves at least from twenty-five to fifty cities and towns in the state of Ohio, and its service to Cleveland is only a part of the service rendered. It is admitted that it does not contemplate nor intend to withdraw its service from other towns which it is serving, with which it has agreed and entered into contracts. I believe the East Ohio Gas Company has entered into a contract with my own city, that of Lakewood, which is satisfactory to both sides. But it claims that it has the right to withdraw its service from the city of Cleveland without consulting the Utilities Commission on two grounds:

First: The so-called Miller Act, if it is attempted to make it apply to the Cleveland situation, is unconstitutional.

Second: The eleventh section of the contract itself provides in so many words that, at the end of the period of the contract which went into effect in 1923 for a period of five years, the

gas company should have the right, nay, should be compelled to withdraw its service and terminate its relation with the city of Cleveland; and it is, therefore, argued that by the terms of this contract the gas company is compelled to withdraw its service, irrespective and in spite of the Miller Act.

When the case was heard in 1921 before the Miller Act was passed upon by the supreme court, I had the notion then that, inasmuch as the Constitution of 1852, which apparently was passed to overcome the force and ruling of the decision in the Dartmouth College Case,—a judgment in which had, therefore, been rendered by the Supreme Court of the United States, which in effect held that a charter granted by Charles the Second to the trustees of Dartmouth College was a contract, and that when New Hampshire became a state in the United States of America, it acceded to all the rights and liabilities of the Colonial Government, operated under the Crown of Great Britain, and so came within the inhibition of the clause of the United States Constitution, which prohibits a state from making any law impairing the obligation of a contract,—now, I say, inasmuch as the constitution of 1852, was in force when the gas contract was made, and in force when the Miller law was passed in 1919, I had thought that, under the police power of the United States, and under the authority granted by the constitution of 1852, § 2, Article 13, which provided that the legislature might pass laws effecting changes in charters of corporations, the Miller law might apply to a pre-existing contract; but the supreme court of Ohio in the case of the East Ohio Gas Co. v. Cleveland, 106 Ohio St. 489, 140 N. E. 410, held otherwise and I, of course, am content to follow its holding.

An examination of 106 Ohio St. 489, *supra,* will show that the only reason why the supreme court of Ohio held the Miller Act not applicable was because the contract of 1911 was in force and effect before the Miller Act was passed and, therefore, in the judgment of the court, it impaired the obligation of a contract and was within the inhibition of the United States Constitution. But the Ohio supreme court clearly indicated that if the Miller Act had been in existence at the time the contract of 1911 was entered into, it could have been invoked, holding that, so far

as contracts that were made thereafter could and should be regulated by the Miller Act. Judge Robinson, in the course of the opinion at page 508 of 106 Ohio St. says:

"The express purpose of these provisions of the code is that when a public utility begins 'furnishing service or facilities within the state of Ohio,' regardless of the terms of the contract under which it is operating, or under which it began such operation, its right to terminate such service is dependent upon the conclusions of the Public Utilities Commission rather than upon the terms of the contract; . . ."

Now it is interesting to notice why the Miller Act was passed. The history of legislation often throws a great deal of light upon the purpose and reason of the legislature. This act was passed after the supreme court had decided the case of East Ohio Gas Co. v. Akron, 81 Ohio St. 33, 90 N. E. 40, 26 L.R.A. (N.S.) 92, 18 Ann. Cas. 332, which held, in effect, that the franchise to the East Ohio Gas Company in Akron was an indeterminable franchise, and after the expiration of a rate contract, it could be terminated by either party, for inasmuch as there was no Miller Act, there was no restraint upon the right of a utility to terminate the relation nor of the city to terminate it likewise, and the people on one hand would be put to great inconvenience and the property of the utility might be practically destroyed on the other hand, unless there were some method of supervising its withdrawal.

In answer to a query from this member of the court to the lawyers as to whether or not the Miller Act did not contemplate a supervision and withdrawal of service by a public utilities corporation after its contract of rate had ceased, so that it might minimize the damage to the public,—for the contract might end in the dead of winter when it would be extremely detrimental to the health and convenience of the public to suddenly withdraw its service—counsel for the gas company, in answer to that query, filed a very able brief pointing out that courts of equity always had the supervisory power under their general equity jurisdiction to supervise the governing and removal of such service by public utilities, and pointed out that in 106 Ohio St. 489, 140 N. E. 410, the supreme court of Ohio gave a six months period

of time in which the gas company could withdraw its service, and cited other cases where the courts have done likewise.

Counsel seems to have lost sight of the proposition that it was going into a court of equity to compel the granting of service after the contract had expired, thus compelling the city or some inhabitant to invoke the jurisdiction of a court of equity to oversee a winding up and a proper abandonment of the service by a public utility corporation.

Assuming that that power existed and does still exist, was it not more consistent with the present trend of government and the relation of utilities to the government to have a body that was created for, and having jurisdiction over, not only one part of the state but the entire state to regulate the withdrawal of service by public utilities? Was not that one reason why the Miller Act was passed? Prior to that time the Utilities Commission had control over certain utilities named in the statute, and then the legislature's attention being called to the danger of withdrawal of service of the gas company in the Akron Case, *supra,* extended jurisdiction of the Utilities Commission to include gas companies.

[1] In this connection it is interesting to quote from the brief of the counsel in that case, which, by the way, was the same counsel that now represent the East Ohio Gas Company. They said in their brief, in effect, that one of the ways in which the obligations of continuing service could be imposed upon such utility was by a statute of the state specially imposing such a duty which thereby became a part of the utility's contract either with the state or with the city, or both. That is apparently what the legislature did, acting upon that suggestion, when it passed the Miller Act which amended the general utilities statute by including within its provisions gas companies.

There are certain products furnished the public which, in their very nature, are not competitive. A monopoly is the best thing for the public, and it is upon that theory that the two gas companies existing in Cleveland, when the East Ohio Gas Company got its franchise, were merged into the East Ohio Gas Company. The public is best served by a public utility having the field solely to itself and not by competition. Now, of course,

the public, with this trend of thought on public service, must not be left to the rapacity of utilities corporations so that they could demand any price and get it because the people would be at their mercy, and so rate-fixing Commissions, Utilities Commissions, that supervise, regulate, and curb the rapacity of a utility that otherwise might squeeze the very life blood out of the people, have come into existence.

The Miller Act was in keeping with the general trend of the public thought upon this question. If you recognize the monopoly and the crowding out of all competitors, there must be some way in which the public may be protected, otherwise the public will be subject to what Justice Stone of the United States Supreme Court said, be compelled to yield to an unconscionable contract because of their utter inability to cope with the utility who had the very necessities of life in its control and refused to contract with the public, no matter how urgent the need, unless it could have its own price, and they could make that price so high that it would be inimicable to the interest of the people who were compelled to yield to their exactions.

The latest pronouncement upon this subject is found in the case of United Fuel Gas Co. v. Railroad Commission, — U. S. —, 73 L. ed. —, P.U.R.1929A, 433, 438, 49 Sup. Ct. Rep. 150, and we quote therefrom as follows:

"The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it *to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give.* An important purpose of state supervision is to prevent such discriminations (see New York ex rel. New York & Q. Gas Co. v. McCall, 245 U. S. 345, 351, 62 L. ed. 337, P.U.R.1918A, 792, 38 Sup. Ct. Rep. 122), and if a public service company may not refuse to serve a territory where the return is reasonable, or even in some circumstances where the return is inadequate but that on its total related business is sufficient (Atlantic Coast Line R. Co. v. North Carolina Corp. Commission, 206 U. S. 1, 25, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398; Missouri P. R. Co. v. Kansas ex rel.

Taylor, 216 U. S. 262, 277, 54 L. ed. 472, 30 Sup. Ct. Rep. 330), *it goes without saying that it may not use its privileged position, in conjunction with the demand which it has created, as a weapon to control rates by threatening to discontinue that part of its service if it does not receive the rate demanded.*"

Now, with this in mind, let us remember that the present contract which the gas company sought to withdraw from, without the consent of the Utilities Commission, was made in April, 1923, and the Miller Act, bringing gas companies under the provisions of the utilities law of Ohio and under the domination and control of the Utilities Commission, was passed in 1919, after the Akron Case, 81 Ohio St. 33, 90 N. E. 40, 26 L.R.A.(N.S.) 92, 18 Ann. Cas. 332, was decided.

Acting perhaps upon the suggestion that was contained in the brief of counsel for the East Ohio Gas Company in the Akron Case, *supra,* the Miller law was passed and a contract was made with reference to the products mentioned within the Utilities law as amended by the Miller Act, and that statute became a part of the contract and the East Ohio Gas Company, by continuing service after the supreme court decision in 106 Ohio St. 489, 140 N. E. 410, and after the adoption of the Miller Act, by entering into a new contract for a period of years at a fixed rate, it thereby agreed that the Miller law should become a part of that contract, and apparently the learned counsel, acting for the East Ohio Gas Company and perhaps those acting for the city of Cleveland, conceived that this Miller law might be a part of the contract, and so they put in the eleventh section of the contract, which is as follows:

"Section 11. The contract arising from the acceptance of this ordinance by the company shall be deemed to have been entered into upon the express condition that on April 30, 1928, this ordinance, the contract created hereby, together with all the rights of the East Ohio Gas Company, its successors and assigns, to occupy the streets, alleys, lanes, public grounds, and public places of the said city, and all its obligations to supply natural gas therein, shall cease and terminate, and the company shall discontinue the supply and distribution of natural gas in said city; provided, however, that said the East Ohio Gas Company,

its successors and assigns, shall have a reasonable time thereafter within which to remove its pipes, mains, and other structures from the streets, alleys, lanes, public grounds, and public places of said city; provided, however, that if the provisions of this paragraph or any part thereof shall be determined to be invalid by any court of last resort, its invalidity shall not invalidate any other section or sections of this ordinance."

Apparently this was an attempt to evade the provisions of the Miller Law, because the counsel had before it the decision of the supreme court, not only in East Ohio Gas Co. v. Cleveland, 106 Ohio St. 489, 140 N. E. 410, but in the case of St. Clairsville v. Public Utilities Commission, 102 Ohio St. 574, 589, P.U.R.1921E, 459, 470, 132 N. E. 151, in which Judge Marshall, speaking for the court, said at page 589:

"It is, however, contended on the part of the village that those decisions no longer have any force or effect and that the doctrines therein promulgated have been annulled by the provisions of § 504–3, General Code (the Miller Act) and that since such enactment the question of the right to withdraw service must be submitted to the Commission for determination. *This view is undoubtedly correct,* but it is not important in the instant case because there has been no disposition to evade the authority of the Commission."

[2, 3] If, then, a utilities corporation, when its contract has expired, if it be one of those utilities named within the utilities act after its amendment in 1919, undertakes to withdraw its service, it must first make an application to the Utilities Commission, and the learned counsel for the gas company undoubtedly had that in mind when they put the eleventh section, above quoted, in their contract, and if the Miller law is unconstitutional and affects the contract in question, did they relieve themselves against it by inserting this clause; namely, clause eleven of their contract. In other words, if the legislature has seen fit, under the broad power known as the police power, in order to regulate the utilities in the interest of the health, comfort, and convenience of the people, to impose certain restrictions upon the discontinuing of service of a utility, can that legislative act be defeated by a contract between the contracting parties? We

think not, and we think the supreme court of Ohio has recently spoken upon that question.

In the case of Southern Surety Co. v. Chambers, 115 Ohio St. 434, 154 N. E. 786, the supreme court, in affirming the court of appeals of the eighth district, held that a contract made between parties, when they ignored a statute, the statute on that subject became a part of the contract, regardless of the terms and conditions written into the contract by the contracting parties. Judge Allen, in speaking for the court, cites a great many cases, many of which are extremely illuminating on the question under discussion. She quotes Verducci v. Casualty Co. 96 Ohio St. 260, 117 N. E. 235, at p. 444 of 115 Ohio St., as follows:

"It was held by this court that the provisions of the statute giving an injured workman the right of subrogation became a part of the contract of indemnity regardless of the contract between the parties."

Also National Union Fire Insurance Co. v. Wanberg, 260 U. S. 71, 67 L. ed. 136, 43 Sup. Ct. Rep. 32, to the same effect.

The same doctrine is announced in Lorando v. Gethro, 228 Mass. 181, 117 N. E. 185.

Globe Indemnity Co. v. Barnes (Tex. Civ. App.) 281 S. W. 215, holds that where specifications of a contract for school buildings require a surety bond acceptable to school trustees, guaranteeing payment of all labor and material, a clause in the bond purporting to limit the liability of the surety to the obligee named is not effective in view of the statutory provisions upon that subject. Duke v. National Surety Co. 130 Wash. 276, 227 Pac. 2; Fogarty v. Davis, 305 Mo. 288, 264 S. W. 879; American Surety Co. v. State ex rel. Dale (Tex. Civ. App.) 277 S. W. 790.

From these authorities and others that might be found, it must be perfectly clear that parties to a contract cannot take themselves from under the statute that was passed for the protection of the public by writing into it terms that are antagonistic to the statute itself.

Apparently the drafters of this section of the contract were a little doubtful as to its efficacy, for in the same section it provides in effect that if this section of the contract is held to be invalid, it shall not affect the rest of the contract, which shall

remain in force and effect; so we think, under the decisions of Ohio, and by the general trend of authority, the Miller Act being in existence at the time that the contract in 1923 was entered into, that Miller Act became a part of the contract, and the gas company or the city, either one,—for it is mutually binding upon both parties,—could not terminate the relation, could not discontinue service, without first making application to the Public Utilities Commission and getting its permission, and that Commission is a Commission appointed to govern all utilities in the state; and it won't do to say that the East Ohio Gas Company is limited to the city of Cleveland alone. It serves, as already stated, twenty-five to fifty cities. It has the gas and it has its customers; it has its property in Cleveland; it surely does not wish to terminate its relation with the people of Cleveland, to enter into a new field, to lay new mains, to get new customers and to re-establish a new plant elsewhere.

[4] Can there be any serious objection to any well-minded utility—and it must be remembered that utilities are permitted and created for the purpose of aiding and benefiting the public,—can it, I say, be any hardship for the East Ohio Gas Company to file an application with the Public Utilities Commission, setting up its desire, giving notice through the Commission of its desire to withdraw its service; and after a hearing, if the Utilities Commission think it ought to be granted, it has the power, under certain terms and conditions, to grant the withdrawal of service. If, on the other hand, it finds that it is not to the best interests of the public, it can refuse the permission, and I apprehend that in such case the Utilities Commission would have the power to fix what would be a proper rate to give a fair return for the capital invested by the gas company. But it is said that to do this interferes with the power of municipalities to contract, as provided for in Article 18, § 4 of the constitution. We do not think so. This is not a *limitation* upon the *power* to contract. If the Miller law said that a municipality could not *make* a contract with a gas company without first getting the permission of the Utilities Commission, there might be some force to the argument that it *impinged* upon the right

to contract and was in violation of Article 18, § 4 of the constitution.

But no such purpose is contemplated. A contract was entered into freely between the city of Cleveland and the East Ohio Gas Company, and it lasted through the entire period of its duration and then, for some reason, the city and the gas company cannot agree upon a rate, and the gas company apparently wishes to withdraw.

It is an interference with the right to contract to say that after it has entered upon a service, under a contract, after such contract has expired, it cannot withdraw without getting permission from the Utilities Commission, which has the power to appraise the property for taxation, which has the power of control over utilities; I say, can there be any hardship, can there be any argument that there is an interference with the right of contract by having a Commission provide for its orderly discontinuance of service, so as not to endanger the health and property of the inhabitants and people who use it, for it must be remembered and always kept in mind that the real parties in interest in this law suit are the two hundred thousand users of the gas. The *city* will not be discommoded; nor will the state. It will be the *people* who pay the gas company, who have piped their homes and furnished the equipment at the expense of millions, that will be damaged by the withdrawal of the service. And when the learned counsel concede in the able brief which they filed that a court of equity could interfere and would have the power to interfere with a hasty or detrimental withdrawal of service, it seems to me they concede their case away.

[5] The legislature of Ohio, the supreme power of the state of Ohio, within the constitution of Ohio and the United States, have put the regulation of this withdrawal of service into the hands of the Utilities Commission of Ohio, and the Miller law was passed for the very purpose of having this effect. The contract between the East Ohio Gas Company and the city of Cleveland in 1923 was made with reference to that statute, and that statute became a part of the contract, and it was just as much a duty of the gas company to get the consent of the Utilities Commission to withdraw service as it was to furnish gas under

the contract. It was a part of its contract, and the ineffectual effort that was made by § 11 becomes merely nugatory.

The East Ohio Gas Company lays much stress upon the decision laid down in Oak Harbor v. Oak Harbor Nat. Gas Co. 106 Ohio St. 660, 140 N. E. 943. It was a *per curiam* and it simply based the opinion of the court upon the opinion rendered in the same volume, to-wit, the East Ohio Gas Co. v. Cleveland, 106 Ohio St. 489, 140 N. E. 410, and no one can read anything out of that case other than that the Miller law being in existence at the time the present contract was made, it became part of that contract.

[**6, 7**] We think from this whole record, and from the authorities that the city of Cleveland and the state of Ohio were both entitled to the relief they seek by injunction, and are entitled to a perpetual injunction to prevent the East Ohio Gas Company from withdrawing its service from the city of Cleveland without first making an application and obtaining the consent of the Utilities Commission. In other words, we think that the Miller law is a valid exercise of the police power and is not unconstitutional. We think it became a part of the East Ohio Gas Company's contract and it is bound by its provisions. Nor do we think that an imposition of the Miller act interferes in the slightest degree with the right of a municipality to contract as provided for in § 18, Article 4 of the constitution, and from the whole record we can come to no other conclusion than that the injunction should be allowed and made perpetual.

The injunction will be allowed.

Sullivan and Levine, JJ., concur in judgment.

WEST VIRGINIA PUBLIC SERVICE COMMISSION.

V. R. HERTZOG

v.

MARION TELEPHONE COMPANY.

[Case No. 1888.]

Commissions — Power over telephone contracts — Pay station.

1. The Commission has no power to enforce the terms of a contract

P.U.R.1929E.

by which a telephone company secures from an individual the privilege of operating a public telephone pay-station on his premises, and it is not concerned with the terms of such a contract unless and until it appears that those terms affect the quality or cost of service to the public or that the service is being furnished under unduly preferential conditions by virtue of the terms of such contract, p. 47.

Public utilities — Service subject to regulation — Telephones — Pay-stations.

2. The establishment and maintenance of public telephone service is subject to regulation to the same extent that regulation applies to individual service, p. 48.

Service — Duties of a telephone company — Changing terms of service.

3. It is the duty of a telephone company by law to establish and maintain adequate and suitable facilities under terms which must be filed with the Commission and which may be changed only upon thirty days' notice, subject to investigation and suspension by the Commission, and a facility thus established may not be discontinued without permission of the Commission, p. 48.

Service — Discontinuance — Public pay-stations.

4. A telephone company seeking to enforce a charge for listing public pay-station telephones without regard to regulations of the Commission governing rate changes was held not entitled to discontinue service under such circumstances, p. 48.

Service — Regulations — Evasion of Commission jurisdiction — Telephones.

5. Proposed telephone regulations reserving to the company "the decision as to the extent, character, and location of the public telephone facilities," were held improper and repugnant to the statutory power conferred upon the Commission to regulate such matters, p. 48.

Service — Regulations — Immaterial provisions — Telephone pay-station.

6. A provision in a proposed telephone pay-station regulation requiring a "contract signed by the agent" of the company was stricken out as not germane to the tariff in view of the private character of contractual relations, p. 49.

Service — Telephones — Listing of pay-stations.

7. A company regulation that public telephone stations should not be listed in the directory was held improper, p. 49.

Commissions — Managerial discretion — Public pay-station.

8. The Commission is ordinarily not concerned as to the particular site of a public pay-station, although it may properly require the establishment and maintenance of such service at some convenient and accessible site to be acquired by the utility, and to require the continuance of service once established until some other site more available and convenient is proposed by the company, p. 51.

(DIVINE, Commissioner, dissents.)

[February 26, 1929.]

COMPLAINT by telephone subscriber against a telephone company for discontinuance of service; service ordered to be reinstated.

Appearances: A. Blake Billingslea, Fairmont, for complainant; Rollo J. Conley, Fairmont, for defendant.

Coffman, Chairman: The complainant owns a drug store at Worthington, Marion county, and complains that the defendant telephone company has violated the law governing its public service business, among other things, by "cutting off service from complainant and wholly refusing and denying him reinstatement without any cause whatever therefor." He prays that defendant be ordered to cease and desist from said violation of law, and that the Commission "ascertain a lawful rate for said defendant" and require it to reinstate the service. The service consisted of a public pay-station under an arrangement whereby complainant was paid a percentage on the tolls earned by the station. The station was listed in the directory provided by the telephone company.

The defendant by answer denies the alleged violation of law, and, in the course of the proceeding, asked authority to put into effect regulations covering both public telephone service and semi-public service. The two proposed regulations are as follows:

Public Telephones

Purpose: Public telephones will be installed for the use of the general public and their use by the occupants of the premises in which they are located is only an incidental part of the purpose for which such telephones are intended.

Location: The decision as to the extent, character, and location of the public telephone facilities rests with the company. The character of the premises or the location of the instrument should not be such as to offer risk to the company's equipment or receipts.

Public Telephone Agent: Persons with whom arrangements are made for the installation of public telephones are designated as "public telephone agents."

Rate of Commission: Public telephones are installed upon securing a contract signed by the agent, such contract, however,

to be terminable on ten days' notice. The rate of commission to be paid to Public Telephone Agents is as follows:

Where the total receipts amount to $10 or less per month, 5 per cent; where the total receipts amount to over $10 per month, 10 per cent on the amount over $10.

Listing: Public telephones will not be listed in the telephone directory.

Semi-Public Telephones

Purpose: Semi-public telephones are furnished at locations more or less public in character but not, in the opinion of the telephone company, suitable for the installation of public telephone service. They are furnished on an individual line basis.

Rates: Semi-public telephones will be furnished at the rate of 75 cents per month plus charges for local and toll messages at the established rates; subscriber to guarantee to the telephone company revenue from local messages at 10 cents each of not less than $3.00 per month.

Listings: Semi-public telephones will be listed in the telephone directory.

Commissions: No commissions are allowed on semi-public telephone service.

No testimony was offered or taken in support of either of these schedules, they having been proposed at the instance of the Commission in view of the complainant's prayer that a lawful rate be ascertained for public telephone service, and the further circumstances that the defendant company has no regulations on file for such service and expressed a desire to include such provisions in its tariffs. Therefore, the Commission will have to consider the proposed schedules in the light of the whole record in this case.

For a long time prior to the discontinuance of service here complained of, the telephone company had maintained a public telephone station at the store of the complainant under the arrangement above set out. Early in 1928, the company undertook to enforce a new arrangement whereby the complainant would be subject to a charge, as the company says, of 75 cents per month for having the station listed in the directory. The complainant

understood this charge to have been 75 cents a year. As a matter of fact the company sought to establish a charge similar to the initial payment under the schedule it now proposes for semi-public telephones, disguised as a fee for directory listing.

The occasion for discontinuing the complainant's service and the circumstances surrounding it become immaterial to this decision in the light of the pleadings and the present contentions of the parties. The complaint prays the Commission to prescribe "a lawful rate" for the defendant and to require the service to be reinstated under the terms so prescribed. The defendant proposes an amendment to its tariff stating the conditions under which "public telephones" will be operated, and a further provision for a class of service designated "semi-public telephones." Complainant's counsel argues in his brief that the defendant has breached the original contract between it and the subscriber and should be required to reinstate the service under the terms of that contract, insisting that the proposed schedules covering public and semi-public service should not be approved.

[1] We do not understand that this Commission has jurisdiction to try controversies arising from an alleged breach of contract, as a general proposition. Indeed, the Commission has no power to prescribe or enforce the terms of a contract by which a public service telephone company secures from an individual the privilege of operating a public telephone pay-station on his premises, and it is not concerned with the terms of such a contract unless and until it appears that those terms affect the quality or cost of telephone service to the public or that telephone service to the owner of the premises is being furnished under unduly preferential or unjustly discriminatory conditions by virtue of the terms of the contract. The public place at which it is desirable to operate a public telephone is the private property of some one. The telephone company acquires the use of the premises at which to carry on its public service business as an incident to its managerial duties as it would rent a building in which to operate its exchange and maintain its offices. Contracts under which the use of such private property is acquired by a utility are enforceable elsewhere than before a regulatory

Commission. Questions concerning the adequacy and cost of service to the public are for the Public Service Commission.

[2, 3] The establishment and maintenance of public telephone service is subject to regulation to the same extent that regulation applies to individual service. The first duty of a telephone company under our law (§ 4) is to establish and maintain adequate and suitable facilities and to perform such services in respect thereto as shall be reasonable and sufficient for the convenience of the public. The terms and conditions under which such service is furnished to the public must be stated in the company's tariff, which must be filed with the Commission and posted in the company's offices and places of business for the information of the public. These terms and conditions may not be changed by the telephone company, except upon at least thirty days' notice to the Commission and to the public, and subject to protest by the public and investigation and suspension by the Commission. And a public service facility once established may not be discontinued by a utility company except by permission of the Commission.

[4] The Marion Telephone Company has been at fault in that it failed to file with the Commission, and to give notice to the public of any provision for furnishing public telephone service, and further, in that it arbitrarily sought to enforce a charge for listing the public pay-station without regard to the statute and the regulations of the Commission governing changes in the rates, rules, regulations, or practices of public utility companies. At this late date, however, and after complaint, the company offers for our approval the provisions heretofore set out. The complainant has also asked that a lawful rate be fixed for the service.

Proposed Regulations for Public Telephone Service

[5] The regulations proposed by the company for its public pay-station service are open to criticism. The provision that "the decision as to the extent, character and location of the public telephone facilities rests with the company," can not be approved. It is repugnant to the power conferred upon the Commission by § 5 of the law to require public service corporations to conform to the provisions of the statute that they establish

and maintain adequate and suitable facilities and furnish such service as shall be "reasonable, safe, and sufficient for the security and convenience of the public . . . and in all respects just and fair, and without any unjust discrimination or preference." The public is concerned with "the extent, character, and location of public telephone facilities." Such facilities are a part of the service connected with the station of each subscriber. And, while it is the duty of the telephone company to acquire the site for the service, questions of the adequacy and suitability of the facilities, and of the reasonableness and sufficiency of the service for the convenience of the public, are for the Commission upon complaint to it or investigation by it.

[6] As we have pointed out, the terms of any contract between the company and the owner of the site of a pay-station are matters of private contract so long as they do not infringe upon the prohibitions of the statute against undue preference and unjust discrimination as to service. Therefore, the provisions in the schedule concerning "a contract signed by the agent . . . to be terminable on ten days' notice," will be stricken out as not germane to a tariff.

[7] The provision that public telephone stations will not be listed in the directory is unusual. It was brought out at the hearing that the complainant would receive calls at the station in his store for a taxicab stand next door, and would accommodate the party calling by delivering the call to the taxi stand, and that, therefore, the pay-station ought not to be carried in the directory. We can not agree to this proposition. So far as the transient user of a public pay-station is concerned, it is immaterial if the station is listed or not. But, what of the convenience of the subscriber who needs to reach some one though a pay-station? Two people are concerned in a telephone message, the sender and the receiver. The sender is initially interested, and for his use a directory is printed. Such a directory should list every station to which a message may be sent, unless the subscriber for his own reasons requests that his station be omitted.

Regulations for public telephone service by the Marion Telephone Company, will, therefore, be approved and required to be put into effect, as follows:

Purpose: Public telephones are installed for the use of the general public, and their use by the occupants of the premises in which they are located is only an incidental part of the purpose for which such telephones are intended.

Location: The company recognizes its responsibility for providing adequate facilities to meet all reasonable public requirements, and in the selection of locations the company will endeavor to secure the most suitable of those available for the purpose, public convenience and accessibility considered. The character of the premises or the location of the equipment should not be such as to offer risk to the company's property or receipts.

Public telephone agent: Persons with whom arrangements are made for the installation of public telephones are designated as "public telephone agents."

Rate of commission: The rate of commission to be paid to public telephone agents is as follows: 5 per cent on the first $10, or less, total receipts per month, 10 per cent on all receipts in excess of $10 per month.

Listing: Public telephones will be listed in the telephone directory.

Semi-Public Telephone Regulations

The proposed schedule for semi-public service may be approved except that the words, "in the opinion of the telephone company," under the title "Purpose:" should be omitted.

Disposition of the Complaint

The prayer of the complaint in this case will be considered as an application by the complainant on behalf of the public for the establishment of public telephone service at his store. The telephone company voluntarily holds itself out to furnish such service by proposing the supplement to its tariffs which we have approved as modified and amended. It even goes so far as to set out the commissions it proposes to pay the owner of the site of a public telephone station.

The manager of the telephone company contends on the witness stand that there is no necessity for a public telephone at the complaint's store. The evidence appears to be against him on this point. The complainant testifies that the average monthly tolls

earned by the station at his store before it was discontinued amounted to about $18. This indicates that there is reasonable public necessity for the service. His testimony is also to the effect that the location offered at his place of business is convenient and accessible to the public, and there is no contention to the contrary. The circumstances, therefore, appear to warrant the establishment of the service.

[8] In the ordinary case the Commission is not concerned as to the particular site of a public pay-station, although it may properly require the establishment and maintenance of such service at some convenient and accessible site to be acquired by the utility. In this case, however, no other site has been proposed by the company. Its defense is that the service is not necessary. It appears that the telephone equipment has never been removed from the complainant's store, and, under all the circumstances of this case, no violence will be done to the utility's managerial rights to require the service reinstated in Hertzog's store, upon the conditions proposed by the defendant as hereinbefore modified and approved, until such time as a site may be available that is more convenient and accessible to the public. The order should include a requirement in accordance with this finding.

Commissioner Nethken concurs in the foregoing report.

Divine, Commissioner, dissenting: On September 11, 1928, V. R. Hertzog filed a complaint against the Marion Telephone Company and alleges in substance, 1st, that he is a druggist and conducts a drug store on Main street in the town of Worthington under the name of Worthington Pharmacy; 2d, that the Marion Telephone Company is furnishing telephone service to the public at Worthington and vicinity; and 3d, that the telephone company has violated the laws of the state by furnishing grossly inadequate service to the citizens of Worthington and vicinity and especially to complainant and the patrons of complainant's said drug store, by cutting off service from complainant and wholly refusing and denying reinstatement without any cause whatsoever therefor, and the extortion of exorbitant rates for calls from complainant's station and refusal of service until same are paid. The prayer is that the Public Service Commission fix a lawful

rate for defendant, that an order be made requiring the defendant to conform thereto, and that defendant be required to reinstate service to the complainant.

It appears that complaint was made as to telephone service generally, but no effort was made to prove this, and this contention seemed to have been dropped and the only question involved is as to the right of the complainant to have a public pay-station in his drug store.

The majority of the Commission has ruled that the complaint should be considered as one filed on behalf of the public. Mr. Hertzog filed the complaint on behalf of himself and no one appeared for the public and in the public interest. No one testified on behalf of the public. In my opinion it was erroneous for the Commission to hold that the prayer of the complaint in the case should be considered as an application in behalf of the public. The evidence clearly shows it was not a complaint on behalf of the public, but was for the sole benefit of the complainant Hertzog.

From the evidence I gather the fact to be that the Marion Telephone Company established a public pay-station in the store of the complainant, or rather it was in this store when complainant purchased it. No rates as to this service were published and filed with the Commission as required by law, and the arrangement for the station was made between the telephone company and the person in whose place the telephone was established without regard to requirement of the law.

Under the arrangement existing between the complainant and defendant the pay-station was to be put into the complainant's store, he to receive a certain per cent of the tolls and also to be allowed to use the telephone for incoming calls to him without charge. In other words as to incoming calls, he had the use of the telephone like any other subscriber who had his own private telephone. The telephone company evidently reached the conclusion that it was unjust and discriminatory for the party in whose place a pay-station was located to receive incoming messages without some payment, and provided a charge for the use of their telephone in this respect of 75 cents per month should be made, which would entitle that person to be listed in the directory.

This arrangement resulted in the establishment of a semi-public telephone. The complainant refused to pay the 75 cents and the telephone company disconnected the pay-station in complainant's store. Thereupon the complainant made complaint to this Commission and prayed that the telephone be re-established. In my opinion the use of the pay-station telephone by complainant for his private use constituted a discrimination and the defendant was justified in removing this discrimination, and upon the complainant refusing to pay the listing charge was justified in removing the telephone.

In the first place the telephone company, in my opinion, was justified in removing the telephone because the complainant had allowed the telephone to be used in a way not contemplated under the contract. In the second place the contract was in violation of law. And in the third place it constituted a discrimination. Marion Steam Shovel Co. v. Columbus, D. & M. Electric Co. (Ohio App.) P.U.R.1929A, 176, 162 N. E. 725.

I do not agree with the proposition that this Commission has the authority to order the telephone company to restore the telephone to the complainant's store. The complainant is undoubtedly anxious to have it there as it pays him well and attracts people to his store, but it is not his interest involved but that of the general public for whom these pay-stations are installed, and in my opinion the telephone company, in the exercise of the managerial discretion, may locate the telephone at such point as it may elect if it serves the public properly. There is no question but this Commission has authority to direct the company to install a public pay-station in a community if there is a public necessity for it but the location in that community is within the managerial discretion of the telephone company and in my opinion this Commission exceeds its authority when it directs the exact place a public telephone shall be placed. Certainly this Commission can not force any individual to allow the telephone company to place a public telephone in his place of business and there is no reason why the telephone company should be forced to place a telephone in a particular place because an individual wants it there and this Commission thinks it a good place for it.

In the case of State ex rel. Wells v. Western U. Teleg. Co. —

Fla. —, P.U.R.1929A, 252, 118 So. 478, a similar question arose as to the location of a telegraph station in a town, and the court held it was within the managerial discretion of the telegraph company; that the obligation of the company was to render fair, just, reasonable, and sufficient service. Re Oregon-Washington R. & Nav. Co. (Or.) P.U.R.1927E, 194; Tioga County Bell Teleph. Co. v. Citizens Mut. Teleph. & Teleg. Co. (Pa.) P.U.R. 1928A, 712; State P. U. C. ex rel. Springfield v. Springfield Gas & E. Co. 291 Ill. 209, 234, P.U.R.1920C, 640, 125 N. E. 891.

In the tariff or schedule of rates filed by the Marion Telephone Company and which it asks to have approved are rates and regulations governing "semi-public telephones" and "public telephones." I do not see any serious objection to these schedules. I do not think that "public telephones" should be listed in the directory.

Public telephones, as I understand the practice of telephone companies, are not listed and should not be listed. The object of public telephones or pay-stations is to enable one to go to these stations and after paying the toll be connected with some subscriber. These telephones are only for outgoing messages from the pay-stations and no incoming messages are received at such pay-station. The listing of such telephones serves no good purpose but on the contrary results in unnecessary labor being put upon the operators in the central office who are required to answer such calls and decline to make the connection. There is no doubt if Mr. Hertzog made application to the telephone company for an individual business telephone or a semi-public telephone he would receive service at once, but it is quite clear from the petition and evidence that he wants only a public telephone, to have the same listed in the directory and receive incoming calls, neither of which is customary or proper in connection with public telephones.

Public telephones are a matter of public interest and the place that such telephones shall be installed if the public is served is a matter of managerial discretion resting with the telephone company.

In my opinion the rates filed should be allowed to become effective and the complaint dismissed.

P.U.R.1929E.

NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

RE EXETER GAS LIGHT COMPANY.

[D-1251.]

Rates — Minimum charge — Promotional gas rates.

1. A minimum rate, proposed by a gas utility and calculated to stimulate consumption by a corresponding reduction in the succeeding two steps, was allowed the Commission subject to some modifications, p. 55.

Rates — Service charge — Seasonal consumers — Gas.

2. Monthly gas rates were figured on a yearly cost of service basis and a surcharge of $1 per month was allowed for seasonal consumers to be refunded where service extended into a 12-month period, p. 62.

Service — Prepayment meters — Gas.

3. The Commission recommended that all prepayment meters be displaced as speedily as possible by a gas utility and straight meters substituted therefor in view of the obsolete and expensive character of such service, p. 64.

[April 29, 1929.]

INVESTIGATION by the Commission into the reasonableness of proposed gas rates; proposed schedule denied and modified schedule permitted.

Appearances: George B. Tripp, President, and William H. Sleeper, for the Exeter Gas Light Company; John F. DeMerritt, Secretary, Chamber of Commerce, Ralph E. Meras and Walter H. Conner, in opposition.

Storrs, Chairman: [1] On November 20, 1928, the Exeter Gas Light Company filed a new schedule of rates and charges for gas, which it proposed to put into effect January 1, 1929.

Public notice was given of the proposed change in the company's schedule.

Objections to these rates were made by various citizens of Exeter, and hearings on the issues raised were held by the Commission on January 14 and February 12, 1929, at which times all interested parties were given an opportunity to express their views and reasons for approval or otherwise.

The proposed schedule of rates and charges is as follows:

Availability

Town of Exeter, New Hampshire, to consumers contracting for twelve consecutive months' service, through regular meters

and where mutually satisfactory credit relations have been established.

Rate.

For	the	first	500	cu.	ft.	per	month	.....	$1.50	(Minimum bill)
"	"	next	500	"	"	"	"	.....	.25	per C cu. ft.
"	"	"	1,000	"	"	"	"	.....	.22	" " " "
"	"	"	3,000	"	"	"	"	.....	.20	" " " "
"	"	"	5,000	"	"	"	"	.....	.18	" " " "
"	"	"	5,000	"	"	"	"	.....	.17	" " " "
"	"	"	5,000	"	"	"	"	.....	.16	" " " "
"	all	over	20,000	"	"	"	"	.....	.15	" " " "

Discount

Ten per cent cash discount for payment within ten days from date of bill.

Seasonal Surcharge

Where consumers elect to take service for less than twelve consecutive months, a surcharge of $1 per month will be added to the monthly bill as computed at the above rate.

Consumers who shall take service subject to the surcharge and who shall continue to take service for twelve consecutive months, shall be refunded in cash whatever sum has been paid in surcharges during the preceding eleven months, and where consumers shall fail to take service for twelve consecutive months (after having so applied for service), they shall be required to pay $1 for each month of service as taken.

Prepayment rate

For services taken through prepayment meters, the rate shall be 25 cents per C cu. ft. of gas.

In opening for the gas company, William H. Sleeper, attorney, said in part, "the purpose of the gas company is to try on the whole to reduce the gas rates in Exeter and to change the nature of the service there. Up until this time the service has not been good, particularly on account of the variation in the supply of gas which has caused quite a bit of inconvenience to consumers, and the object in scheduling the new rates is to try and distribute fairly over the whole body of the users the charges for caring for the meters, reading the meters and the upkeep of the premises. The general plan of it, as of course you know, slightly raises the charge to those whom I call the luxury users and reduces the charge to those who use 500 cubic feet per month. . . . It has got an investment where it has got either to go out and get business

or else take a financial whipping there in Exeter, and the only way it can do it is to satisfy the people and as we claim reduce the rates and to build up this business, and then if it can build up its business and get the people using more gas we may later on give them more advantage with the rates, and if we can we hope, through the hearing, to furnish information that will be of use." See *Transcript,* page 3.

The first objection was to the minimum charge of 500 cubic feet for $1.50. It is claimed by opponents that this particularly hits the poor man.

Mr. Hitzel, the expert for the gas company, was questioned by Mr. Sleeper, the questions submitted and replies thereto being as follows:

"Q. As you look at it from your experience, whom does this minimum charge, what class of people does this minimum charge affect?

A. It affects the man who maintains gas as an emergency stand-by service.

Q. And it is not your opinion that it affects, we will say, a poorer class of people or people who are liable to have money?

A. It affects the middle class of people. I wouldn't say it affects the poorer class because we found in our experience that the poorer class customer uses gas right along to the extent of more than 500 cubic feet a month.

Q. I thought you used the word emergency. It affects people who only use gas part time?

A. Yes. There are a number of cases like stores that keep gas in for emergency service and perhaps don't use it until something goes wrong with the electric service." See *Transcript,* page 12. "A minimum charge is designed to spread the initial expenses necessary each and every month in order to serve various customers." See *Transcript,* page 4.

"Q. What is the element of fairness as it appeals to you in having a minimum charge?

A. In fairness to the customer?

Q. People as a whole?

A. The minimum charge, as I explained before, is one of the ways of spreading the expenses that the company is put to over its entire list of customers. It costs the company a certain amount

of money every month to serve customers, even if he uses no gas whatever; in fact, the facilities for using gas are maintained there for him. It enters into the expense of the company every month.

Q. (By the Chairman) What about the items in connection with that expense? What are the items?

A. Valuation of meters, distribution of and maintenance of services, reading meters, expense on customers' premises, maintenance of meters, plant expenses, labor operation, a certain percentage, 10 per cent in this case, maintenance of gas-making apparatus 10 per cent, office supplies and rent, clerks, that is, bookkeeping clerks for billing, a certain percentage of repairs to mains, taxes, garage expense, insurance, and 6 per cent on fixed capital less the item of meters which has been taken out." See *Transcript,* pages 8 and 9.

Mr. Sleeper asked Charles S. Morgan, who is manager of the Strafford-York Gas Company of Rochester and Somersworth, the following:

"Q. In your experience, as suggested by the Commissioner, does the minimum charge affect the poor man as a whole?

A. It has been found to be so. The higher class of people in a good many instances are people who travel a great deal off and on, and they will keep a meter in their house, and the interest on that investment is there and the meter reader has to read the meters, the billings have to be made and all that sort of thing, and those customers are perfectly willing to pay their money. They want it for use at any time. Then there is the storekeeper and the business man who has an office, and in case the electric current breaks down he has one or two jets in his office for standby use. The so-called poor man is a man who pays the bills that keeps the gas companies and the utilities going. He wants a quick meal and it gets it quick and he is perfectly willing to pay for it and he uses 1,000 to 3,000 a month. The standby users should pay their proportionate part, if it is there for their use; in other words, it is an equitable distribution of the rates. It is similar to the telephone. You pay so much for a telephone, but if you are away for three months the telephone bill comes in just the same whether you use a cents worth of service, and in addition to that the toll calls are added onto the regular bill." See *Transcript,* pages 21 and 22.

Mr. Meras, in opposition, testified in the following manner: "There is no doubt something in the argument that each customer should pay a little, perhaps more than the actual cost of service and the interest and a little ordinary margin on that actual investment cost, but I know a great many—I know a real estate man there in Exeter. He says that 50 cents would be a great plenty to give them every month for service outside of any gas that is used. I do believe that allowing them $1 per month for a minimum and only have to furnish 300 feet would give them a good profit on their cost, and it is certainly sufficient for them, anyone to pay. . . . I still believe that I have suggested a very liberal thing to the company and certainly charging enough for the minimum small consumers $1 and allow 300 feet for it and charging $1 for installing the services. I don't think it is necessary to say any more." See *Transcript,* pages 28, 29 and 30.

Another objection was to the seasonal surcharge. To this, in explanation, Mr. Hitzel averred, "The only dollar charge that Mr. Meras refers to is put on as a seasonal surcharge where customers take service for a part of a year, and that is necessary because our costs are all based on a yearly basis. All the charges that the gas company have to make, including interest on investment, are figured on a twelve months' basis. If customers figured on six months, we would have to figure the minimum twice as large as we did with twelve months, consequently, customers who take service for part of a year cost us relatively a higher amount of money each year to serve them. We don't want seasonal customers. We would rather have them for twelve months, but we don't anticipate that the surcharge is going to operate against any very large quantity of customers. We believe that the customers who disconnect their service for one month or two months in a year will leave it in because it will be much to their advantage to leave it in, and we will get away from the necessity of taking meters out and putting them back; it all costs money; it is pay roll, and while it may seem unusual from the customer's standpoint, we don't expect that it is going to militate against customers to any extent at all.

If a customer signs up for less than twelve months, consecutive

months of service, the surcharge is $1 a month over his bill figured at the regular rate.

If the customer wants three months' service, he pays the regular rate plus $1 a month. If he signs up for three months' service and keeps it for twelve months' service, whatever money he has paid in surcharge is refunded to him." See *Transcript*, pages 24 and 25.

Mr. Hitzel stated that the company would stand a loss of $4,700 a year if these reduced rates became effective, and representative from Exeter, DeMerritt, said to Mr. Hitzel, "I understood that you are planning on the same consumption and handing back about $4,700 a year to the customers already there, with the hope by the reduction of gaining more business and, therefore, getting the money back?

A. Yes sir.

Q. Do you expect to get that from additional customers or from increased consumption of your customers now?

A. Both.

Q. You anticipate that a 10 per cent reduction which runs up to about $3,000 would be sufficient inducement to make a person use more gas, consequently increase your revenue?

A. That is not all of it. We expect a lower price for gas to automatically give us more business. Whenever you reduce the price of something people buy more. In addition to that we expect to sell gas for a great many uses that the customers have not been familiar with. We expect to make better customers out of the existing ones.

Q. Then the 10 per cent reduction is a big enough one to induce people to use it for other purposes, for instance what?

A. We don't know. We hope it will help.

Q. That reduction you feel sure is sufficient?

A. No. We don't feel that it is sufficient. We hope it will be sufficient.

Q. But you are betting on $4,700?

A. We are on the $4,700 that we are going to get some of it back, yet, we don't feel that the rate that we are quoting here today is as low as it should be. We think it should be lower, but we can't afford to spend more than $4,700 in the first year to get what we are after. We hope to be able to make further reduc-

tions, but we can't do it in one bite." See *Transcript,* pages 16 and 17.

There appeared to be some question as to the quality and efficiency of the gas that the company intended to supply the citizens of Exeter. Mr. Morgan answered Mr. Sleeper's questions as follows:

"Q. And by your new method of making gas in your judgment will the efficiency be reduced by the new method?

A. The efficiency will be increased.

Q. For what reason?

A. This coal gas that had been manufactured down there caused a lot of naphtholene in through the distribution system mains. The services are small size and the maintenance by the company has not been efficient. Just recently within the last month or two we have been going over them and found the services plugged with rust and naphtholene. We are putting solvent in to dissolve it,—kerosene, alcohol, and we are just starting in on benzole. I am acting general manager of the Exeter Gas Light Company.

Q. Water gas process, naphtholene has not been encountered to anywhere near the degree that it has with coal gas?

A. It is a clear gas, very efficient, and most companies throughout the country are changing from what they call horizontal retort benches for coal gas to manufacturing water gas." See *Transcript,* page 18.

The principal objection to the company's proposed schedule was with respect to the first step or minimum charge.

Rate schedules and changes are often very perplexing and there seems to be a difference of opinion even among professional rate experts. Of the correctness of a minimum charge there seems to be almost general agreement.

The Missouri Commission says: "It is a fact that with a relatively small minimum monthly charge the customer may, by using the amount of gas allowed by the minimum charge, get service for which he does not fully pay. But on the other hand, the rates are made to apply to a class of consumers as a group and not to individual consumers. The characteristic features of the load caused by the class as a whole play the important part in determining the schedule of rates to be charged that class of consum-

ers as compared to the schedule to be charged consumers of another class. There must necessarily be some discrimination between individual consumers within a given class but so long as the discrimination is not unfair or undue the rates may be taken as fair." Re Laclede Gas Light Co. (Mo.) P.U.R.1929A, 561, 586.

In connection with a gas rate schedule before the Public Service Commission of New York, Chairman Prendergast and Commissioner Van Namee wrote an opinion in part as follows, some of which might be applicable to the rate structure of any gas utility:

"In the last analysis the vital thing in any rate structure is the bill which the consumer receives. Is that bill based on an equitable allocation of costs between classes of consumers and among the consumers of each separate class? If so, it is a proper rate. If not, it is necessarily discriminatory . . . opposition to the proposed rate must necessarily be based largely upon the very definite increase in the bills of those who only use the smallest amount of gas. But the record is clear that unless the convenience user is required to pay his fair share of consumer costs, that is, the cost due to his own initiative, as distinguished from the commodity cost, such costs must be paid by the other users of gas. The corollary to this is that a continuation of the flat rate basis of charges means a tendency to an increased cost to consumer and a restriction on any decrease of cost to large users." Re Brooklyn Union Gas Co. P.U.R.1929D, 171, 177, 180.

If a utility is to give good service and receive a fair return on the fair value of its property, it must receive rates that are fair and equitable and in harmony with the underlying principles of rate making. The initial cost cannot be reduced without increasing the commodity rate, nor can we increase the initial quantity without the commodity rate increasing.

It is usually overlooked by the party using gas that it is a substitute for other fuel, and a convenience, in addition to a saving of the cost of wood and coal.

[2] The Commission believes there should be some changes in the schedule of rates as filed by the Exeter Gas Light Company, and that the schedules should be modified as follows:

Availability

Town of Exeter, New Hampshire, to consumers contracting

for twelve consecutive months' service, through regular meters and where mutually satisfactory credit relations have been established.

Regular Meters.

Rate	for	the	first	200	cu.	ft.	or	less	per	month	....	$1.11	Minimum	bill	
"	"	"	next	1,800	"	"			"	"	....	.21	per	C	cu. ft.
"	"	"	"	3,000	"	"			"	"	....	.20	"	"	" "
"	"	"	"	5,000	"	"			"	"	....	.18	"	"	" "
"	"	"	"	5,000	"	"			"	"	....	.17	"	"	" "
"	"	"	"	5,000	"	"			"	"	....	.16	"	"	" "
"	"	all	over	20,000	"	"			"	"	....	.15	"	"	" "

Discount

Ten per cent cash discount for payment within 10 days from date of bill.

Seasonal Surcharge

Where consumers elect to take service for less than twelve consecutive months, a surcharge of $1.00 per month will be added to the monthly bill as computed at the above rate.

Consumers who shall take service subject to the surcharge and who shall continue to take service for twelve consecutive months, shall be refunded in cash whatever sum has been paid in surcharges during the preceding eleven months, and where consumers shall fail to take service for twelve consecutive months (after having so applied for service), they shall be required to pay $1 for each month of service so taken.

Prepayment Rate

For service taken through prepayment meters.

Minimum bill first 200 cu. ft. or less, $1.11 gross, $1 net per month.

Rate $.25 per C cu. ft.

It will be noted that the minimum bill is $1.11 gross, net $1, with 200 cubic feet of gas instead of $1.50 gross with 500 feet of gas. Further, that the next step is 1,800 feet of gas at 21 cents per 100 cubic feet instead of 25 cents and 22 cents per 100 cubic feet, these subject to 10 per cent discount for cash. This rate will be somewhat in excess of the present rate up to 600 cubic feet, after which it will be lower than the present rate and will cross the company's proposed rate at 1,500 cubic feet and be a reduction from there on.

Also it will be observed that this rate provides for a minimum charge for prepayment meters and eliminates all service charges.

[3] It is the opinion of this Commission that prepayment gas meters are out of date and make one of the most expensive gas services. The original cost is greater and the maintenance and repairs place an extra useless burden upon the company, which in the end must be borne by the public. It, therefore, follows that it is imperatively necessary that all prepay meters be displaced by the company as speedily as possible, straight meters being substituted therefor.

Officials of the company have stated that it was their plan and aim to provide the citizens of Exeter with better service and at a lower rate, they wish to build up their business and get the people using more gas, and later give them more advantages in the way of rates. The rates that the company proposed, based upon past consumption of gas, will cost the company $4,700 and it is estimated that the schedule proposed by the Commission will cost them $750 in addition, or a total of $5,450.

The company claims reduced rates will cause greater use of gas. Time will tell whether or not this claim is warranted. These rates will be largely experimental and higher or lower rates may appear advisable in the future. With a greater output, the company will receive more income without materially increasing their overhead, which will give an increased net to the company. With a lesser output, of course the opposite would be true.

We believe the rate structure proposed by the Commission is first, not unduly discriminatory, and second, more equitable, fair, and proper than the existing rates.

The company, within the coming twelve months, should be able to determine and inform the Commission as to the operation and effect of these rates as a basis for the adoption of, or a change in such schedule at the expiration of the foregoing mentioned period.

The Commission hereby refuses to permit the schedule of rates filed by the Exeter Gas Light Company, November 20, 1928, to become effective at this time. The Exeter Gas Light Company may substitute the rate schedule suggested in this report by the Commission and these rates may, upon filing before April 30, 1929, become effective May 1, 1929, to remain in force up to and including April 30, 1930.

Brown and Morse, Commissioners, concurred.